THE

Attorney's Practice

IN THE

Court of Common Pleas:

OR, AN

INTRODUCTION

TO THE

KNOWLEDGE of the PRACTICE of that COURT, as it now ſtands on the Regulation of ſeveral late ACTS of PARLIAMENT, RULES, and DETERMINATIONS of the ſaid COURT.

WITH

Variety of uſeful and curious PRECEDENTS in *Engliſh*, drawn or peruſed by Counſel; and a Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

In TWO VOLUMES.

VOL. I.

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For B. TOVEY, J. RIVINGTON and SONS, P. URIEL, W. OWEN, S. CROWDER, B. LAW, W. FLEXNEY, G. ROBINSON, E. BROOKE, S. BLADON, W. STUART, T. WHIELDON, and T. WALLER.

1778.



THE

PREFACE.

THE *Attorney's Practice* in the *Court of King's Bench* having met with a very favourable reception, and being universally allowed to be the most useful book of the kind hitherto published, the author of it was induced to compile the following work, which he formed on the same plan with the former; here-

in are ſet forth under their proper heads the ſeveral acts of parliament relating to the practice, ſuch rules of court as are now in force, adjudged caſes on moſt points of practice, and a great variety of uſeful precedents.

The ſtatutes and rules of the court are not ſet forth in a brief or ſummary way, but the enacting and ordering parts generally at large, ſo that the reader will ſcarce ever have occaſion to apply to the ſtatutes or rules themſelves.

To the acts of parliament; rules of court and adjudged caſes, the author has chiefly confined himſelf in this work, chuſing rather to be ſilent, than to ſay

ſay any thing for which he had not ſufficient authority, and being cautious of nothing more than leading the young practicer into a miſtake.

The precedents, of which the greateſt part were drawn or peruſed by counſel, are ſuch as will be moſt frequently wanted in the general courſe of buſineſs.

To render this book the more uſeful, a very copious index is added, drawn under a great variety of heads, ſo that the reader may with eaſe apply to any particular point of practice he ſhall want to be informed of.

To the ſecond edition was added a new volume of pleadings,

a thing desired by many, and, it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profession; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well skilled in special pleading. Formerly all attornies drew their own pleadings, and never had occasion for any assistance but the advice of the most learned. This kind of learning, which is now too much neglected, led them into the very reasons of the practice, and into a knowledge of the common law, which none but a special pleader can be said to be thoroughly master of: An attorney, without being acquainted with special pleading,

can

can have no other, than a confused knowledge of such particular instances of practice only as have passed through his own hands, and upon the least variation is as much at a loss as if he never knew any thing of the matter; hence spring demurrers, motions, expence and endless delays to the suitors, and discredit to the practicer; for which reasons the loss of this branch of learning among the generality of the profession is greatly to be lamented, and the retrieving of it can't be too much recommended.

In the third edition were added instructions for levying fines, and suffering common recoveries, with some directions touching replevins.

In

PREFACE.

In this fifth edition, besides a great variety of new acts of parliament and rules of court, and also adjudged cases from *Barnes*, *Wilson*, &c. are many additional notes and observations, and the following entire new heads, to take them alphabetically:

1. Action for criminal conversation.
2. Inrolling deeds.
3. Motions.
4. Mutual debts and credits.
5. Proceedings against peers and members of parliament.
6. Proceedings in order to save the statute of limitations.
7. References from court. And
8. Summonces.

See the Index.

The following order of the chief justice not being published

till

till that part of this volume was printed off, in which, it could with any degree of propriety be introduced, it is here inſerted:

Under the printed papers of ſettings in and after *Hilary* Term, 1778, is the following notice given, *viz.*

The Lord Chief Juſtice to obviate a great expence and inconvenience to defendants and their witneſſes, in cauſes entered for the *firſt* day of ſittings *after* term, through the plaintiff's not paſſing the records in proper time, hath thought fit to order, that all records in ſuch cauſes, be paſſed and left with his marſhal, on the preceding evening of ſuch ſitting, by the hour of ſeven.



THE

Attorney's Practice

IN THE

Court of Common Pleas.

Of the Jurisdiction of the Court.

ALL pleas are regularly divided into pleas of the crown, and into common or civil pleas. Pleas of the crown are those which concern treasons, felonies, misprisions of treasons, *&c.* This court is the lock and key of the common law in common pleas, and therefore called the *Court of Common Pleas*; for in this court real actions, whereupon fines and recoveries (the common assurances of the realm) do pass, and all other real (*a*) actions by original writs, are to be determined. In all (*b*) personal

(*a*) Actions real are such actions whereby the demandant claims title to any lands or tenements, rents, or commons, in fee-simple, fee-tail, or for term of life. Every action real is either possessory, that is of his own possession or seisin, or ancestrel, that is of the possession or seisin of his ancestor. 6 *Rep.* 3.

(*b*) Actions personal are such actions whereby a man claims a debt or other goods and chattels, or damage for them,

ſonal and mixt (*c*) actions, this court and the court of *King's Bench* have a concurrent juriſdiction.

The juriſdiction of this court is general, and extendeth itſelf throughout all *England.*

Generally all actions (*d*) in this court are founded upon original writs iſſuing out of the *Chancery*, and returnable in this Court, whereupon the plaintiff proceeds either to arreſt the defendant, outlaw him, or ſerve him with a copy of proceſs, purſuant to the ſtatutes 12 *G.* 1. *c.* 29. 5 *G.* 2 *c.* 27. Perpetuated by 21 *G.* 2. *c.* 23.

them or damages for wrong done to his perſon, and is properly that which in the civil law is called *actio in perſonam*, which is brought againſt him who is bound in covenant or default to give or grant any thing. "*Terms "of the law*," Tit. "*Actions perſonal.*"

(*c*) A mixt action is a ſuit given by the law to recover the thing demanded, and damages for the wrong done; as in aſſize of novel diſſeiſin, which writ (if the diſſeiſor makes a feoffment to another) the diſſeiſor ſhall have againſt the diſſeiſor and the feoffee, or other tertenant, and thereby ſhall recover his ſeiſin of the land, and his damages for the meſne profits, and for the wrong done him; and ſo is an action of waſte and *quare impedit*; but an action of *detinue* is not called an action mixt, altho' by it the thing withheld is demanded, and ſhall be recovered if it may be found, and damages for the withholding, and if it cannot be found, damages for the thing and the detaining; but ſtill an action of detinue is called only an action perſonal, becauſe it ſhould be brought only for goods and chattels or charters.

(*d*) An action is the form of a ſuit given by law to recover a thing, as an action of debt, &c. or as it is in 8 *Rep.* 151. *a.* an action is a right of proſecuting to judgment that which is due unto any one; *actio eſt jus proſequendi in judicio, quod alicui debetur.*

But

But this court may hold plea on writ of privilege iſſuing originally out of this court at the ſuit of any attorney, officer, miniſter, or clerk of the court intitled to ſuch writ.

It may alſo hold plea by bill, which is in the nature of a petition to the court, againſt any attorney, officer or miniſter, intitled to the privilege of the court; and expreſſes either the grievance or wrong which the plaintiff has ſuffered by the defendant, or elſe ſome fault by him committed againſt ſome law or ſtatute of the realm.

A knight, citizen, burgeſs, or other perſon intitled to privilege of parliament, may be ſued in this court by original bill, in manner as directed by the ſtatute 12 & 13 *W.* 3. *c.* 3.

This court may, upon proper ſuggeſtions, grant prohibitions to keep, as well temporal, as eccleſiaſtical courts, within their proper bounds and juriſdictions, without any original writ or plea depending; for the common law, which in theſe caſes is a prohibition of itſelf, ſtands inſtead of an original. 12 *Co.* 108.

Actions are alſo removed into this court out of inferior courts of record by writ of *Habeas corpus cum cauſa*, or (*e*) *Certiorari*; and out of inferior courts not of record, by

(*e*) *Certiorari* is a writ that lies to remove a record into a ſuperior court from an inferior court of record, where the party ſuppoſes he may not have equal juſtice done him.

 (*f*) *Pone*,

(*f*) *Pone*, (*g*) *Recordari*, (*h*) *Accedas ad curiam*, or writ of falſe (*i*) judgment.

This court hath alſo juriſdiction for the puniſhment of its own officers and miniſters, and all other perſons guilty of contempts againſt the rules and orders of court.

Sir John Walter *refuſed to ſurrender his patent without cauſe of miſbehavior ſhewn, the ſame being granted during good behavior.*

Notwithſtanding king *Charles* I. commiſſioned Sir *John Walter*, a profound learned man, a grave and able (*k*) judge, and of great integrity and courage, by his royal letters patent, to exerciſe his office, during his good behaviour, yet, he being in the king's (*l*) diſpleaſure, was in the beginning of *Mich.* (*m*) term, 5 *Car.* 1. *A. D.* 1630, before he ſet in court, (*n*) required, by command from his majeſty, to forbear to come to *Weſtminſter* (*o*) *Hall*, for the purpoſe of exerciſing his judicial place in (*p*) court, and, in obedience to the ſaid command, he did

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(*f*) Is a writ whereby a cauſe depending in the county court is removed into this court.

(*g*) Commonly called a *refalo*, taking its name from the firſt ſyllable of each word in the name of the writ, viz. *recordari facias loquelam*.

(*h*) This writ lies to remove a cauſe out of the court baron into this court.

(*i*) If a falſe judgment be given in a court not of record, as in a county-court, hundred, or court baron, the party injured may have a writ of falſe judgment, returnable in this court.

(*k*) Whitl. Mem. Engl. Af. 16. Col. 1. Cr. Car. 147.

(*l*) Whitl. Mem. ib.

(*m*) Cr. Car. [illegible]

(*n*) The king diſcharged him from his ſervice by meſſage, Whitl. ib. ſee id. 14. Col. 1.

(*o*) [illegible] Jo. [illegible]

(*p*) Cr. Car. 147, 153.

(*q*) forbear,

(*q*) forbear, and never exercised his office, after the king forbad (*r*) him; but yet he still retained his (*s*) post; and because his judicial office was conferred on him, *quam diu se bene gesserit*, he would not leave his place, nor surrender his patent, but by the legal proceeding of *Sci. Fa.* to try, whether he did *bene se gerere* or (*t*) not; and that the king might shew what cause he had, for determining his patent, or for him to forfeit it; so he continued a judge to the time of his death (*u*).

Commissions of the judges during good behaviour, instead of during pleasure,

After the passing the votes against the judges, for their opinion in case of ship money, 16 *December* 1640, and transmitting them to the house of peers, and their concurring with the house of commons therein, an address was made to the king shortly after, that his majesty for the future would not make any judge by patent (*w*) *during pleasure*, but that they might hold their places hereafter, *quam diu se bene gesserint*; and his majesty did readily grant the same; and in his speech to both houses of parliament, at the time of his giving his royal assent to two bills, one to take away the high (*x*) commission court, and the other the court of star (*y*) chamber, and regulating

(*q*) W. Jo. 230.
(*r*) Whitl. Mem. Engl. Af. 16. Col. 1.
(*s*) Id. ib.
(*t*) Whitl. Mem. 16. Col. 2.
(*u*) Cr. Car 147.
(*w*) Clar. Hist. Rebel 121.
(*x*) Stat. 16 Car. 1. Chap. 11.
(*y*) Stat. 16 Car. 1. Chap. 10.

the power of the council table, he hath this passage "If you consider what I have done this parliament, discontents will not sit in your hearts; for I hope you remember that I have granted that the judges hereafter shall hold their places, *quam diu se bene* (z) *gesserint.*"

Sir John Archer *refused to surrender his patent without cause of misbehavior shewn, the same being granted during good behavior.*

As king *Charles* II. observed the same rule and method, in granting patents to judges, *quam diu se bene gesserint*, as his royal father did, as appears upon record, in the rolls of the court (*a*); so he did in removing a judge, notwithstanding his solemn grant inrolled on record to the contrary; for Sir *John Archer*, one of his justices of the court of *common pleas*, after having sat in this court, nine years, was, during the vacation after *Mich.* (*b*) term, 24 *Car.* II. (being then senior (*c*) judge,) required to forbear the exercise of his office, either in court or elsewhere; and was amoved from sitting therein, for reasons unknown to Mr. Justice (*d*) *Raymond*; but Sir *John* having his patent,

(z) 3 Rusher. Histor. Collect. 1366.

(a) Clar. Hist. Rebel. 121. Mr. Justice *Croke* observes, that the judges of both benches are made only during the king's pleasure, so that they are removeable at the king's will, Cro. Car. 147. and Mr. Justice *Jones* observes, that Sir *Humphry Davenport's* patent (Sir *John Walter's* immediate successor in the chief baronship in the *Exchequer*) was during pleasure, and that of Sir *Walter's*, during good behavior. W. Jo. 230. 3 Rush. Histor. Collect. fol. 1366.

(b) T. Jo. 43.

(c) T. Raym. 217. T. Jo. 43.

(d) T. Raym. 217.

quam

quam diu se bene (*e*) *gesserit*, refused to surrender the same, without a *Scire Facias:* so that he continued a justice of this court, though prohibited to sit (*f*) therein; and, notwithstanding his removal, enjoyed his patent, and received a share in the profits of the said court, as to fines and other proceedings, by virtue of his patent; and his name was used in those fines, *&c.* as a judge of that (*g*) court.

Judges salaries.

By Stat. 20 *Edward* III. chap. 1. the king's justices are to take no fee, but of the king.

The ordinary allowances of the judges, were, in *Edward* I.'s time, very (*h*) liberal, according to (*i*) *Whitlock*.

By stat. 10 *Hen.* VI. stat. 2. the salaries of the judges were to be paid them half yearly, in *E.* and *M.* terms, by the lord high (*k*) treasurer of *England*; but it appears by the year (*l*) books, that they were to be paid

(*e*) T. Jo. 43. T. Raym. 217.

(*f*) T. Raym. 217.

(*g*) 3 Rusher. Histor. Collect. 1364.

(*h*) The salary of the judges was liberal anterior to the reign of *Edward* I. according to Sir *William Dugdale*, for he informs us, the chief justice of England received 1000 marks a year, for his support in that great employment, so early as 44 *Hen.* II. Dugd. Orig. Jur. 20.

(*i*) Whitl. Mem. Engl. Af. 344.

(*k*) The treasury is now and hath been in commission, a great number of years.

(*l*) 10 *Hen.* VI. fol. 1 *Hen.* VII. fol. 3, 4, 5.

out of the (*m*) arrears of the customs, by the customers and comptrollers of *London*; and that it was enacted by the said statute, that they should pay to the justices, out of the first monies arising out of the customs; and that they should have their proportion by the day, and it was held that the customers were liable, though the king granted a licence to some merchants, to retain the customs, in their hands, for the judges met at *White-Fryars*, and agreed to sue, but the customers (*n*) complied.

From the death of king *Hen.* VI. to the date of their patents, in king *Richard* III.'s time, the judges had a privy seal to receive their salaries; as they had from the mean time, between the death of *Richard* III. and the date of their patents, in *Henry* (*o*) VII.'s time.

Sir *William* (*p*) *Dugdale*, is of opinion, that the salaries of the judges were more cer-

(*m*) By stat. 1 *Geo.* III chap. 23. sect. 3. the salaries of the judges are payable out of the annual sum granted for the support of his majesty's houshold, and the honor and dignity of the crown; and by sect. 4. they are, after the demise of his majesty, to be charged upon and paid out of the [illegible] for the use of his majesty's civil government, [illegible] shall be subsisting after such demise, until some other provision [illegible] be made by parliament for the expences of the civil government; and until the making such provision and [illegible] the continuance thereof, such salaries shall be [illegible] out of the monies applicable to the said uses and expences.

(*n*) See Year book, [illegible] *Henry* VII. fol. 3.

(*o*) See Year book, 1 *Henry* VII. fol. 4, 5.

(*p*) See Orig. Jur. 105.

tain

tain after 18 *Henry* VI. becauſe in that year the judges of all the courts in *Weſtminſter Hall*, together with the attorney general, and king's ſerjeants at law, exhibited a petition to the parliament, in *French*, a copy whereof may be ſeen in Sir *William's Origines* (q) *Juridicales*; ſoon after which their ſalaries were (r) encreaſed.

Oliver's (s) Parliament provided that every judge ſhould have a competent ſupply, according to his great pains and quality, for their better encouragement and ſupport.

By ſtat. 12 & 13 *William* III. chap. 2. ſtat. 13. the ſalaries of the judges were aſcertained and eſtabliſhed; during which reign, and until the acceſſion of his preſent majeſty's great grandfather, king *George* I. the ſalaries of all the judges (the chiefs as well as the puiſne) were equal, viz 1000 *l.* a year, upon whoſe acceſſion they were increaſed by diſtinct patents from thoſe, by which they were appointed judges viz.

The ſalary of the chief juſtice of this court, to double his former ſalary, and thoſe of the reſt of the judges, to half as much again, as their former ſalaries. See 2 R. Raym. 1319.

By ſtat. 32 *George* II. chap. 35. ſect. 18. the ſalary of every of the puiſne judges is augmented 500 *l.*

(q) Id. ib.
(r) Id. 109, 110.
(s) Whitl. Mem. Engl. Af. 344.

By

By ſtat. 1 *George* III. chap. 23. ſect. 3, 4. ſuch ſalaries as are ſettled by act of parliament upon, or granted by his majeſty to any judge, ſhall be paid him as long as his patent and commiſſion continue in force.

The ſalaries of the judges of this court ſeem now not only to be aſcertained but alſo eſtabliſhed, as follows: The lord chief juſtice 2500 *l.* (*t*) *per annum*, every of the puiſne judges 200 *l.* *per annum*.

At common law the patents of the judges were determined by the demiſe of the crown, but by ſtat. 7 and 8 *William* III. chap. 27. ſect. 21. and 1 *An.* ſtat. 1. chap. 8. ſect. 1, 2. no patent or grant of any office ſhall ceaſe or be void, by reaſon of the demiſe of the crown, but ſhall remain in force for ſix months, unleſs ſuperſeded by the ſucceſſor, and by ſtat. 12 and 13 *Wil.* III. chap. 2. the commiſſions of the judges are to be made *quam diu ſe bene geſſerint*, but upon the addreſs of both houſes of parliament, they may be removed.

The court conſiſts of a chief juſtice and three puiſne judges, created by letters patent; but no one can be conſtituted a judge of this court, unleſs he be a ſerjeant of the degree of the coif.

(*t*) This judge's ſalary was encreaſed from 2000 *l.* to 2500 *l.* a year, by his preſent majeſty; and the reaſon it is not equal to other chiefs is, becauſe all fines and recoveries are levied and paſſed in this court only, and the fees thereof are almoſt the ſole perquiſites of the chief.



The present judges are Sir *William De Grey*, chief justice; Sir *Henry Gould*, second; Sir *William Blackstone*, third; and Sir *George Nares*, puisne justice.

Officers of the Court of Common Pleas.

THE *custos brevium* is the first or principal officer of the court of *Common Pleas*; and holds his place by grant from the crown; the present patentees are *John Browning*, Sir *Robert Eden*, *Frederick Young*, and *Edward Gore*, who execute the said office by *John Walton*, esq; their deputy.

Custos brevium His appointment.

The duty of this officer is to record and file in his office all original and judicial writs, and inquisitions taken by virtue of any such writs, all posteas after verdicts, and fines, with the concords signed by the parties acknowledging the same; and the writs of *Dedimus potestatem* issued for taking the acknowledgment of such fines, with the transcripts thereof, &c. which fines are by him entered in a book of the same term the respective writs of covenant are returnable, and the proclamations of such fines are by him indorsed, upon the captions, according to the statute. He is also to record and file all writs of entry and summons, writs of *Dedimus potestatem* for taking warrants of attorney thereupon, and writs of seisin to support recoveries suffered in the said court; to make copies and exemplifications of the said writs and records when required, and to return writs of *Certiorari*, directed to him, for the

And duty.

 removing

removing any writs or other records into the court of *King's Bench*.

Prothonotaries.

Their appointment, &c.

There are three prothonotaries of this court, who hold their offices for their respective lives, and (*a*) are admitted by the chief justice of the court for the time being. The second prothonotary is admitted on the nomination of the *custos brevium*, who, in right of his office, has the appointment of the second prothonotary. Each of the three prothonotaries has, belonging to his office, one secondary, one clerk of the judgments, and one clerk of the dockets. The present prothonotaries are *William Mainwaring*, *Anthony Dickens*, and *Henry Earle*; their office is No. 2. in *Tanfield* court, *Inner Temple*; and their hours of attendance from 9 in the morning to 1 in the afternoon, both in term and vacation; and from 4 in the afternoon to 8 at night in term time; and to 6 in the evening in vacation.

(*a*) *Memorandum*, That the office of chief prothonotary in the Common Pleas, being vacant, after the last term, by the death of *Nicholas Rockwood*; and lord *Brook*, chief justice of the Common Pleas, gave the said office to *Gaillard* his wife's brother; and, because he was not qualified, revoked it, and conferred the same on *Whiteley*, contrary to the pleasure of the other justices, who thought *Bell* a fitter person. *Mich.* 4 & 5 *P.* & *M.* *Dy. Rep.* 150 b. pl. 1 *Rast Ent.* 443. See the oath of a prothonotary. *Rast. Ent.* 442. See the admission of a second prothonotary, and the admission of a third prothonotary. *Moyle's Entr. fo.* 3.

The

The duty of the chief prothonotary.

The chief prothonotary adminiſters the oaths to the officers and attornies of the court; enters on record the patents of the juſtices, and the patents, ſurrenders and admiſſions of the other officers of the court. He enters on a remembrance roll the names of all attornies ſworn in court, and makes certificates thereof to the clerk of the warrants, who thereby enter their names in the roll of attornies. He enters all writs of adjournments of the terms; he draws up the general rules of the court, made for regulating and ſettling the practice in the proceedings therein, and cauſes the ſame to be ingroſſed and hung up in the treaſury chamber at *Weſtminſter*, and gives copies thereof to the judges, and to the other prothonotaries and officers of the court, if required, without any fee. He adminiſters the oaths and declarations taken to the government; and keeps an alphabetical liſt of the names of the perſons taking the ſame; and files in his office the certificates brought in by them; and alſo the rolls on which they ſubſcribe their names. He has the cuſtody of the court-book, in which are entered the names of all cauſes on demurrers, ſpecial verdicts, and other matters that are to be argued in court, and of cauſes that are to be tried at bar, with the reſpective terms, number-rolls, and offices in which they are entered, and takes minutes of the judgment of the court in all cauſes argued therein.

The chief prothonotary is alſo attorney for the city of *London* within this court, and hath

hath from the city yearly four yards of black cloth to make him a gown; and a livery fee of 1 *l.* 13 *s.* 4 *d.* is paid yearly to him by the secondaries of *London*, as deputy-sheriff.

Duty of the three prothonotaries.

The three prothonotaries, in term time, attend the sitting of the court at *Westminster*, for the dispatch of such matters as arise from causes entered in their respective offices, and to inform the court of the state of such causes, and to certify the court in matters of practice when required. Each of the prothonotaries has a publick office in one of the inns of court, at which they respectively attend every afternoon, in term time, and out of term every day (sundays and holidays excepted) from nine in the morning till one or two, and from four in the afternoon till eight or nine.

It is their duty to enter on record all declarations, pleas, replications, and pleadings subsequent, demurrers, joinders in demurrers, and judgments. To enter all bills filed against attornies and other privileged persons, and forejudgers thereon for want of appearance. To sign writs of attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpœna*, *Scire facias*, *Capias ad satisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias possessionem*, *Habere facias seisinam*, *&c.* To strike special juries, and to sign records of *Nisi prius*. They are to see that all common recoveries be carefully ingrossed on rolls of the court, examined, docketted, and placed in their proper offices, and the writs belonging to the same filed with the *custos brevium*,

brevium, and to examine all exemplifications of ſuch recoveries.

Perſons committed by the court for contempt are examined on interrogatories by the prothonotaries, who make reports thereon, and on other matters referred to them by the court, and tax bills of coſts, and ſtate the debts and coſts on bills, bonds, mortgages, and other ſecurities, on references made to them by the court, purſuant to the act made in the 4th and 5th years of queen *Anne*, for the amendment of the law.

Stat. 4 & 5 Ann. c. 16.

The prothonotaries have the cuſtody of all common and plea rolls, and deliver the ſame out, and keep an account of the perſons names to whom the rolls are delivered, that they may be able to call for a return of them, and make caret papers, certifying defaulters, in order to a proſecution, purſuant to ſeveral rules of the court. They keep an account of all rolls received into their offices, after proper entries are made thereon, and keep dockets of all judgments, entries of writs, and other entries, which they carefully examine with the rolls, before they are delivered into the office of the clerk of the eſſoins, or clerk of the warrants, and the writs into the office of the clerk of the *cuſtos brevium*, which are afterwards by the ſaid officers carried into the treaſury of the court, but the dockets remain in the prothonotaries offices. The prothonotaries likewiſe keep remembrance rolls, on which all rules made in court are entered, and on which all recognizances of bail, appearances, *Scire facias's*

cias's and *Præcipe's* taken at the bar on common recoveries, are entered.

Secondaries. There are three secondaries in this court, one belonging to each prothonotory, who has the nomination and appointment of such secondary; which appointment has been usually for the joint lives of the prothonotary and secondary. The present secondaries of the court are, *Henry Fothergill*, *Alexander Gerrard*, and *William Skinn*.

Their appointment.

And duty. The secondaries in term-time attend the court and the judges in the treasury, to read all the records, writings, affidavits, petitions, papers, and exhibits; to take minutes of all rules and orders, and draw up the same, and take recognizances in court. They enter all commitments of prisoners, discontinuances, and satisfactions acknowledged upon record, and amend records by order of court. They administer the oaths to prisoners taking the benefit of the late act made for the relief of debtors, with respect to the imprisonments of their persons, prepare assignments of their prisoners estates and effects, and draw up rules for their discharge. On trials at bar they act as associates, that is, call the jury out of and in court, read the record, call the defendant, read all written evidence, call the jury before a verdict given, and record the verdict, take minutes of all special verdicts, and draw up the same, and make copies thereof for the plaintiff, defendant, and judges. They take an account of all fines, and recoveries passed, and suffered at bar. And in term-time, after the rising

The office of clerk of the errors is in the nomination of the chief justice of the court for the time being, and has been usually granted by verbal appointment to hold during the pleasure of the chief justice. *Stephen Hough*, esq; is clerk of the errors to the right honourable the present lord chief justice.

Clerk of the errors.

His appointment;

The clerk of the errors, as deputy or clerk to the lord chief justice, has the allowance and receipt of all writs of error brought up on judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Superfedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and justifying bails, and gives certificates of the neglects thereof; and also gives rules for plaintiffs in error to certify the records, and makes transcripts of the records and judgments, and transmits the same into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that such records are removed into the *King's Bench*, and signs, and enters *Non-prosses* for defaults of plaintiffs in error, certifying their records. He hath also the allowance and return of all *Certiorari's* directed to the lord chief justice, for certifying records from this court into any other.

And duty.

The judges clerks are verbally appointed by their respective judges, to continue during pleasure.

Judges clerks.

The duty of these clerks is to ingross bail-pieces on writs of *Habeas corpus*; and in-

And duty.

dorse commitments on the back of the return, and to draw up surrenders of persons surrendering themselves in discharge of their bail, and to ingross bail-pieces on writs of *Certiorari*; to enter all such bail-pieces, as likewise to enter the commitments and surrenders in books kept for that purpose, (which books persons are at liberty to inspect without fee or reward;) to take recognizances of bail acknowledged before their respective judges; to read over to the parties the contents of all fines and warrants of attorney for suffering common recoveries, and admissions of infants to sue or defend by prochein amy, or guardian, and to write the captions thereon, to ingross the returns of writs of *Dedimus potestatem* directed to their respective judges; to write the *Allocatur* of a fine taken before commissioners upon oath of the due caption thereof, and to write the captions of deeds acknowledged in or out of court to be inrolled, and to administer the oaths to persons making affidavits, or bail justifying, and to draw up summonses and orders made by their respective judges.

The clerks to the lord chief justice make out commissions for taking affidavits and special bails, and file the approbations signed by the puisne judges, in order for such commissions and enter the names of the commissioners so appointed in a book kept for that purpose.

Associate at Nisi prius in The office of associate at *Nisi prius* in *London* and *Middlesex* is in the appointment of

 the

the lord chief justice, and has been generally granted by parol, to hold during pleasure only. The present associate is Mr. *Thomas Lloyd.*

London and Middlesex.
His appointment;

The duty of this officer is to wait on the lord chief justice, when he appoints the days of sittings at *Nisi prius,* and to make copies thereof, which are stuck up in the prothonotaries offices, and in *Westminster Hall,* to attend the court during the sittings, and draw out of the box the names of the jurors, and record their appearances and defaults, and return the same. To read the record, and all written evidence, and to take down the minutes of facts and enter the records in a book; record verdicts, return *Posteas,* and draw up orders of the court of *Nisi prius,* and make copies for each side, to attend with the jury to take a private verdict, and draw up and enter the same on the *Postea,* and make out copies thereof.

And duty.

The office of marshal at *Nisi prius* in *London* and *Middlesex* is also in the nomination of the lord chief justice, and has been time immemorial granted by parol appointment, to hold during the pleasure of the lord chief justice. The present marshal is *Stephen Hough,* esq.

Marshal at Nisi prius *in* London *and* Middlesex.
His appointment;

This officer is to attend the lord chief justice of this court, at all such times as his lordship sits to try issues depending in this court, by writ of *Nisi prius,* either in the county of *Middlesex* or city of *London.* He enters the names of all causes set down to be tried for the said city and county, in a book

And duty.

 kept,

kept and provided by him for that purpose, which he carries down with him every day in term-time, to *Westminster*, that all attornies may have recourse to it to enter their causes, to inspect and see what causes are entered, and at proper times to enter *Ne recipiaturs*; and in the afternoon this book is kept at the lord chief justice's chambers for the same purpose. During the time appointed for trials in the said causes he personally attends the court during the whole time of their sitting, to receive the records and writs, and mark them. The marshal first calls the name of the cause, and then delivers up the record to the lord chief justice, and sits under him, to be ready, upon all occasions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next sitting.

Cryer at Nisi prius *in* London *and* Middlesex.

His appointment;

The office of cryer at *Nisi prius* in *London* and *Middlesex* is also in the gift of the lord chief justice for the time being, and has been usually granted by parol appointment, to hold during pleasure. Mr. *Avis* is cryer to the present lord chief justice.

And duty.

His duty is to call the jurors, and swear them, and all witnesses produced on such trials.

Chief proclamator.

His appointment;

Heneage Walker, esq; hereditary proclamator of this court, granted to *John Walker*, esq; the office of marschal proclamator, and barrier of this court, with all fees, &c. to hold to him and his heirs for ever. There are four persons who act as cryers of the court,

one

one of which is alſo court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclamator.

And duty. The duty of the proclamator and barrier is by himſelf, or deputies, to attend the court of *Common Pleas* at *Weſtminſter*, and make proclamations, *&c.*

The four cryers Their appointment; The cryers are appointed by deputation from the chief proclamator.

And duty. Their duty is to attend the court, to adminiſter the oaths to juries, witneſſes, bails, and perſons making affidavits; to hand rules affidavits, *&c.* from the ſerjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed againſt them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the eſſoins on the return-days, make proper adjournments, *&c.*

Court-keeper. His appointment; The court-keeper is appointed by the chief proclamator.

And duty. His duty is to take care of the court, and that the tapeſtry and cuſhions be kept clean, the court waſhed, matted and cleaned, and to take care of the acts of parliament, and other books made uſe of in court.

Porter of the court. His appointment; The porter of the court holds his place by the appointment of the chief proclamator.

And duty. His duty is to attend the judges in court, hang out of the [illegible]s every day, take care of

 them;

them; and to do other business as occasion requires.

Warden of the Fleet *His appointment; And duty.*

The warden of the *Fleet* prison is *John Eyles*, esq; appointed by letters patent to hold during pleasure.

His duty is to receive, and have the custody of all prisoners committed by this court to the *Fleet* prison.

Clerk of the papers and rules of the Fleet prison *His appointment; And duty.*

The present clerk of the papers and rules of the *Fleet* prison is Mr. *Low*, who holds his place by grant or appointment of the warden of the *Fleet*.

It is his business to receive and enter, in books kept for that purpose, the commitments of prisoners committed to the said prison by this court, to enter declarations delivered to the turnkey of the prison against prisoners, and to enter and file the discharges of prisoners, and to give certificates thereof, and return writs of *Habeas corpus*, and other writs directed to the warden, and enter the same in a book kept for that purpose, and also to give certificates of charges against prisoners, and certificates of day-rules granted to prisoners by the court.

Tipstaffs. Their appointment, And duty.

There are two tipstaffs attendant on this court, who are admitted by deputation from the warden of the *Fleet*.

They attend the judges whilst sitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them also attends the chief justice at the sittings of *Nisi prius* at *Westminster* and in *London*, and on the circuits. Their duty is to receive all prisoners

priſoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* priſon, and deliver them to the turnkey there; and alſo to bring up priſoners to the court, or before a judge, on a *Habeas corpus*, or rule of court for that purpoſe.

Commiſſioners for taking affidavits, concerning matters in this court, to be appointed by the judges.

The judges of this court, or any two of them, whereof the chief juſtice to be one, ſhall and may, by one or more commiſſion or commiſſions, under the ſeal of this court, from time to time, as need ſhall require, impower what and as many perſons as they ſhall think fit and neceſſary in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every ſuch affidavit and affidavits as any perſon or perſons ſhall be willing and deſirous to make before any of the perſons ſo impowered, in or concerning any cauſe, matter, or thing depending, or any wiſe concerning any of the proceedings in the ſaid court, as maſters of *Chancery* in extraordinary do uſe to do. And any judge of aſſize in his circuit may take and receive any affidavit or affidavits as any perſon or perſons ſhall be willing and deſirous to make before him in or concerning any cauſe, matter or thing depending or in any wiſe concerning any proceedings in the ſaid court: Which ſaid affidavits, taken as aforeſaid, ſhall be filed and then read and made uſe of in the ſaid court to all intents and purpoſes as other affidavits taken in the ſaid court now are; and

And judge of aſſize in his circuit may take ſuch affidavit.

Affidavit to be filed, and then read and uſed, &c.

all and every affidavit and affidavits, taken as aforesaid, shall be of the same force as affidavits taken in the said court now are; and all and every person and persons for swearing him, her, or themselves in such affidavit or affidavits, shall incur and be liable unto the same penalties as if such affidavit or affidavits had been made and taken in open court. *Stat.* 29 *Car.* 2. *c.* 5. §. 2.

Penalty of perjury in such affidavits.

Fee for taking such affidavits.

For the taking of every such affidavit, the person or persons so impowered and taking the same, shall for so doing receive only the sum or fee of 12 *d.* and no more. *Same Stat.* §. 3.

Commissioners for taking bails in any suit in this court, to be appointed by the judges.

The Justices of this court or any two of them, whereof the chief justice to be one, may by one or more commission or commissions under the seal of this court, from time to time, as need shall require, impower such and so many persons, other than common attornies and solicitors, as they shall think fit and necessary, in all and every the several shires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every such recognizance or recognizances of bail or bails, as any person or persons shall be willing and desirous to acknowledge or make before any of the persons so impowered in any action or suit depending in this court, in such manner and form, and by such recognizance or bail piece as the justices of this court have used to take the same, which said recognizance or recognizances of bail or bail-piece so taken as aforesaid

Recognizances to be transmitted to a judge of the court.

aforesaid shall be transmitted to some or one of the justices of this court, who upon affidavit made of the due taking of the recognizance of such bail or bail-piece, by some credible person present at the taking thereof, such justice shall receive the same upon payment of such fees as have been usually received for the taking of special bails by the justices' clerks, and other the officers of this court; which recognizance of bail or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse*, before any of the said justices; for the taking of every which recognizance or recognizances of bail or bail-piece, the person or persons so impowered shall receive only the sum or fee of 2 *s.* and no more. *Stat.* 4 *W.* & *M. c.* 4. §. 1.

Affidavit of the due taking, &c.

Fee for taking, &c.

The justices in this court shall make such rules and orders for the justifying of such bails, and making the same absolute, as to them shall seem meet; so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in this court to justify him or themselves: But the same may and is hereby directed to be determined by affidavit or affidavits taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates; unless the cognizor or cognizers of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof. *Same Stat.* §. 2.

Judges to make rules for justifying, &c.

The same to be by affidavit taken before a commissioner.

Unless, &c.

Any

Any judge of assize in his circuit may take such bail.

Any judge of assize in his circuit may take and receive all and every such recognizance and recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees. *Same Stat.* §. 3.

Acknowledging bail in the name of any other not privy or consenting, felony.

Every person who shall acknowledge, or procure to be acknowledged, any fine, &c. recognizance or recognizances, bail or bails, &c. in the name of any other person not privy or consenting to the same, and being thereof convicted, shall be adjudged to be a felon, and suffer death, &c. without benefit of clergy. *Stat.* 21 *Jac.* 1. *c.* 26. 1 *H. H. P. C.* 696. *Et vide Stat.* 4 *W.* & *M. c.* 4. §. 4. Whereby personating another before those who have authority by that act to take bail, so as to make him liable to the payment of any sum of money in that suit or action, is made felony.

Attornies of the court.

No one to act as an attorney, unless served five years clerkship.

BY the statute (*a*) 2 *Geo.* 2. *c.* 23. *sect.* 5. no person shall be admitted to act as an attorney, sue out any process, or defend any action in this court, unless he shall have been bound by contract in writing to serve as a

(*a*) Perpetuated by *Stat.* 30 *Geo.* 2. *c.* 19. *sect.* 75.

clerk

clerk for five years to an attorney duly admitted, as by the ſtatute is directed, and for the ſaid term of five years ſhall have continued in ſuch ſervice, and then be examined, ſworn, admitted and inrolled.

If his maſter ſhall die, or the contract be vacated, before the five years are expired, then to ſerve the remainder of the five years with another attorney.

If any attorney, with whom any perſon ſhall be bound by contract in writing to ſerve as aforeſaid, ſhall die before the expiration of ſuch five years; or if ſuch contract ſhall by mutual conſent be vacated, or ſuch clerk be legally diſcharged by rule or order of court before the expiration of ſuch five years, then if ſuch clerk ſhall by (*b*) contract in writing ſerve as a clerk to ſome other attorney, admitted as aforeſaid, during the remainder of the ſaid five years, ſuch ſervice ſhall be as effectual as if he had ſerved five years to the perſon to whom he was originally bound. *Stat.* 22 *G. c.* 46. *ſect.* 9.

Judges to examine his fitneſs and capacity before admiſſion.

The judges, before they admit ſuch perſon, are to inquire touching his fitneſs and capacity, and if thereby ſatisfied, and not otherwiſe, are to adminiſter to him, in open court, the oath after mentioned, and cauſe him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1 *s.* for adminiſtring the oath. *Same Stat. ſect.* 6.

Mr. *Rayner*, in his readings on *ſect.* 11. of this ſtatute, ſays that Mr. *Barrington's* obſervation "that notwithſtanding *ſtat.* 4

(*b*) Though without entring into any new articles. *Stat.* 22 *Geo.* 2. *c.* 46. §. 15.

Hen.

Hen. VI. chap. 18. it is not the modern practice to examine attornies before admittance," is not true, and afferts that no attorney is admitted at this day, without a previous (*c*) examination; but whether by virtue of 4 *Hen.* VI. chap. 18. or 2 *Geo.* II. chap. 23. he will not take upon him to say. *Rayn. Recd.* 2 *Geo.* II. chap. 23. p. 48.

The oath.

I *A. B.* do fwear, That I will truly and honeftly demean myfelf in the practice of an attorney according to the beft of my knowledge and ability.

So help me God.

id. fect. 1.

A Quaker on taking his folemn affirmation, may be admitted an attorney.

Any perfon being one of the people called Quakers, having ferved a clerkfhip with an attorney or folicitor, and being qualified as by ftatute 2 *Geo.* 2. *c.* 23. is required, may, on taking his folemn affirmation inftead of the oath by the faid act directed, before fuch judges, and others who are to adminifter the faid affirmation, be admitted and inrolled as an attorney or folicitor, as if he had taken the faid oath. *Stat.* 12 *Geo.* II. *c.* 13. §. 8.

Attornies to be inrolled.

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to inrol the

(*c*) The Judge inquires into the fitnefs of the attorney, by asking him a few trivial law queftions, the anfwers to which, generally convince him of the abilities of the clerk, as much as reading the *neck* verfe (formerly neceffary, in order to obtain benefit of clergy) did convince the court and mankind of the learning of the culprit. *Rayn. Read* 108.

name

name of every perſon who ſhall be admitted an attorney of this court, purſuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpoſe, to which all perſons ſhall have recourſe without fee or reward. *Stat.* 2. *Geo.* 2. *c.* 23. §. 18.

No attorney to have more than two clerks at one time.

No attorney ſhall have more than two clerks at one and the ſame time, who ſhall be bound by contract in writing. *Same ſtat.*

Prothonotaries may have three clerks.

The prothonotaries of this court may have three clerks, and at one and the ſame time, and no more; and ſuch clerks having ſerved five years may be admitted, &c. in the ſame manner as any perſon may, who ſhall have ſerved a clerkſhip to a ſworn attorney for five years. *Same ſtat.* §. 15.

Attorney, with conſent of attorney of another court, may practice in ſuch court.

Any perſon ſworn, admitted, and inrolled an attorney of this court, with conſent in writing, and in the name of any attorney of any other court of record at *Weſtminſter*, &c. may ſue out any writ, or commence or defend any action in ſuch court, notwithſtanding ſuch perſon be not ſworn or admitted an attorney in ſuch coutt, *Same ſtat.* §. 10.

Attorney of *C. B.* may by this clauſe of the ſtatute carry on proceedings in the court of great ſeſſions of *Wales*, in the name of an attorney of that court, and declare for buſineſs and fees. *Barnes* 160.

Attorney permitting thoſe that are not, to act in his name, diſabled to practice.

If any ſworn attorney of this court ſhall knowingly and willingly permit or ſuffer any other perſon to ſue out any writ, or commence or defend any action, in his name, not being a ſworn attorney or a ſworn ſoli-

citor

citor in *Chancery*, &c. and ſhall be thereof convicted, he ſhall, from the time of ſuch conviction, be diſabled to practice, and his admittance be void. *Same ſtat.* §. 17.

Attorney may be admitted a ſolicitor.

A ſworn attorney of this court may be ſworn, admitted and inrolled a ſolicitor in all or any of the courts of equity without any fee for the oath, or any ſtamp, if the maſter of the rolls, *&c.* ſhall, on examining, be ſatisfied that ſuch attorney is duly qualified to be ſo admitted. *Same ſtat.* §. 20.

Attorney of the King's Bench not to be admitted of C. P. without a new ſtamp.

2 Geo 2. c. 23. §. 20.

An attorney of the *King's Bench* applied in the treaſury to be admitted an attorney of this court without ſtamps, but upon looking into the above ſtatute of 2 *Geo.* 2. *c.* 23. wherein no proviſion is made for an attorney of one court to be admitted an attorney of another without duty, though there is a proviſion for ſolicitors of one court of equity, *and for attornies to be admitted ſolicitors without duty*, the judges refuſed to admit him without payment of the duty. *Barnes* 38.

No attorney to commence any action for fees, &c. until a month after a bill delivered and ſigned.

No attorney of this court ſhall commence any action for recovery of any fees, charges, or diſburſements, until one month after he ſhall have delivered to the party to be charged therewith, or left for him at his dwelling-houſe, or laſt place of abode, a (*d*) bill of ſuch fees, charges and diſburſements, in a com-

(*d*) That ſo the client may have an opportunity of looking into it before he is run to any further expence, *Pract. Reg. C. P.* 36. *Rep. & Caſ. Pract. C. P.* 27. Taxation cannot regularly be applied for before bill delivered. *Barnes* 36, 243.

mon

mon legible hand, and in the *English* tongue, (except law terms, and the names of writs) and in words at length (except times and sums) subscribed (*e*) with the proper hand of such attorney [since by *stat.* 12 *Geo.* 2. a bill may be wrote with such abbreviations as are commonly used in the *English* language;] and upon application of the party chargeable by such bill, or any other in that behalf authorised, unto any judge of the court, *&c.* where the business, or the greatest part thereof in amount or value was transacted; and upon submission of the party, or other person authorised as aforesaid, to pay the whole, that upon taxation shall appear due to such attorney, the judge, *&c.* is required and impowered to refer the bill, and the whole of such attorney's demands thereupon (although no action be depending touching the same) to be taxed, without any money (*f*) being brought into court. And if the attorney, having due notice, shall refuse to attend such taxation, the officer may proceed *ex parte* (pending which reference no action shall be brought;) and upon such taxation the party shall forthwith pay to the attorney the whole that shall be found due, and in default be liable to an attachment or process of contempt,

And on application of the party chargeable by such bill.

And submission to pay what shall appear due on taxation.

The bill to be referred to be taxed.

Without bringing money into court.

No action to be brought pending the reference.

On taxation the party to

(*e*) Co. Cas. 60.

(*f*) Lord chief justice *King* first introduced the practice of bringing money into court, because the party being stopped from suing at law, he thought it reasonable that the attorney should have security for his money: this was previous to this statute. See *Mosely* 68. *pl.* 40.

pay what shall be found due. contempt, or other proceeding at the election of the attorney. And if upon such taxation it shall be found, that such attorney has been overpaid, then the attorney shall forthwith pay to the party all such money as the officer shall certify to have been so overpaid; and in default shall in like manner be liable to attachment, or process of contempt, or other proceeding, at the election of the party. And the court is to award costs of taxation according to the event thereof, (*viz.*) if the bill taxed be less by a sixth part, than the bill delivered, the attorney is to pay the costs; if not less by a sixth part, the court at discretion shall charge the attorney or client according to the reasonableness or unreasonableness of the bill. *Same stat.* §. 23.

And if attorney found to be over paid; then to refund

If bill taxed be less by a sixth than bill delivered, the attorney to pay the costs of taxation, aliter *at the discretion of the court.*

Not to extend to any bill of fees between one attorney and another.

Nothing in the said act contained shall extend to any bill of fees, charges and disbursements, due from one attorney or solicitor to any other attorney or solicitor, or clerk in court, but every such attorney, solicitor or clerk in court, may use such remedy for recovery of his fees, charges and disbursements, against such other attorney or solicitor, as he might have done before the making the said act. *Stat.* 12. *Geo.* 2. *c.* 13. §. 6.

Nor to conveyancing business.

An attorney's bill for conveyancing business only, is not liable to be taxed otherwise than by a jury upon a *quantum meruit. Barnes* 41, 42. *Bul. Ni. Pri*

After an attorney's death his bill not to be taxed.

After an attorney is dead his bill is not liable to be taxed. *Rep. & Cas. Pract. C. P.* 58. *Barnes* 42. *S. P.* 119, 122.

The

Of application to tax an attorney's bill.

The court will not order that an attorney ſhall deliver his bill, and that the ſame ſhall be taxed, on one and the ſame motion, they being diſtinct matters, and the latter part may prove fruitleſs; the bill may be reaſonable, and no occaſion to tax it; the motion muſt be for the attorney to deliver his bill, and then, if there be occaſion, the client may move to have it taxed; but the more uſual way is to ſummons the attorney before a judge; and if the judge's order be diſobeyed, to move the court, that the order may be made a rule of court, and then proceed to an attachment in caſe of further contempt.

Any perſon practiſing as an attorney not being admitted forfeits 50l.

Any perſon in his own name, or in the name of any other, ſuing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the ſaid act as attorney or ſolicitor, in expectation of any gain, fee or reward, without being admitted, ſhall forfeit 50*l.* to the uſe of the perſon who ſhall proſecute, and be made incapable to maintain any action for any fee, reward or diſburſement, on account of proſecuting or defending any ſuch action. *Stat.* 2 *Geo.* 2. *c.* 23. §. 24.

No attorney being a priſoner to commence or proſecute any action.

No attorney who ſhall be a priſoner in any gaol or priſon, or within the limits, rules or liberties of any gaol or priſon, ſhall, during his confinement, in his own name, or the name of any other, ſue out any writ or proceſs, or commence or proſecute any action or ſuit, and all proceedings in ſuch action or ſuit ſhall be void and of no effect;

Such attorney to be ſtruck off the roll.

and ſuch attorney ſo commencing or proſecuting any action or ſuit as aforeſaid, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future;

As alſo any other attorney permitting ſuch attorney to uſe his name.

and any attorney permitting and impowering any ſuch attorney as aforeſaid, to commence or proſecute any action or ſuit in his name, ſhall be ſtruck off the roll, and be incapacitated from acting as an attorney for the future. *Stat.* 12 *Geo.* 2. *c.* 13. §. 9.

Not to extend to ſuits commenced before the confinement of ſuch attorney.

This not to extend to prevent any attorney ſo confined as aforeſaid, from carrying on or tranſacting any ſuit or ſuits commenced before the confinement of ſuch attorney. *Same Stat.* §. 10.

Suing on a bail bond given in an action commenced before the impriſonment, is but a continuance of the original ſuit.

After an action commenced by an attorney he becomes a priſoner, then the bail bond is aſſigned, and he, being ſtill a priſoner, commences an action on the bail bond; this has been held to be a continuance of the original ſuit commenced before the attorney became a priſoner. 2 *Barnes* 40.

Attornies priſoners may defend, tho' not proſecute ſuits.

It has alſo been held, that the above act, diſqualifying attornies who are priſoners from practiſing, relates only to the proſecuting, and not to the defending ſuits. *Barnes* 263.

Every perſon bound clerk to cauſe an affidavit to be made of the execution of the articles, ſpecifying the names and places of abode of the parties, date, &c.

Every perſon, who after 1 *July* 1749, ſhall be bound by contract in writing to ſerve as a clerk to any attorney of this court, as by *Stat.* 2 *Geo.* 2. is directed, ſhall within three months after the date of ſuch contract, cauſe an affidavit to be made of the actual execution of ſuch contract by ſuch attorney, and the perſon ſo bound, ſpecifying the name of ſuch attorney, and of the perſon ſo bound, and

and their places of abode reſpectively, together with the day of the date of ſuch contract; and ſuch affidavit ſhall be filed within the time aforeſaid in this court, with the officer after mentioned, or his deputy, who ſhall make and ſign a memorandum or mark of the day of filing ſuch affidavit, at the back or bottom thereof. *Stat.* 22 *Geo.* 2. *c.* 46. §. 3.

Affidavit to be filed, and the day of filing marked thereon.

No perſon ſhall be admitted an attorney before ſuch affidavit ſo marked ſhall be produced, and openly read in court. *Same ſtat.* §. 4.

No perſon to be admitted an attorney, till affidavit read in court.

In this court the clerk of the warrants, or his deputy, ſhall be the proper officer for filing ſuch affidavits. *Same ſtat.* §. 5. And ſhall keep a book, wherein ſhall be entered the ſubſtance of ſuch affidavit, ſpecifying the names and places of abode of every ſuch attorney and clerk, and of the perſon making ſuch affidavit, with the date of the contract, and the days of making and filing ſuch affidavit, and may take, at the time of filing ſuch affidavit, 2 *s.* 6 *d.* for his aforeſaid trouble, which book may be ſearched *gratis.* *Same ſtat.* §. 6.

Clerk of the warrants to file ſuch affidavits, and enter ſubſtance thereof in a book.

Fee 2 s. 6 d.

Book to be ſearched gratis.

No attorney ſhall have, take, or retain any clerk, who ſhall become bound by contract in writing as aforeſaid, after ſuch attorney ſhall have diſcontinued or left off, or during ſuch time as he ſhall not actually practiſe as, or carry on the buſineſs of an attorney. *Same ſtat.* §. 7.

No attorney to take ſuch clerk after he has diſcontinued buſineſs.

L. had ſerved an apprenticeſhip to *G.* a ſcrivener in the city, and alſo a ſworn attorney of the court of *Common Pleas:* By the

Service to a ſcrivener tho' alſo an attorney not good.

 tenor

tenor of the articles *G.* covenanted to inſtruct *L.* in the art and myſtery of a ſcrivener; and it appeared that *G.* during the term of five years ſpecified in the articles, had never practiſed as an attorney, but acted as a ſcrivener only. Application was made to the lord chief juſtice, and in the treaſury, that *L.* might be ſworn an attorney, which was refuſed, he not having ſerved as *clerk* to an *attorney*; but as *apprentice* to a *ſcrivener.*

N. B. There was formerly the ſame determination in the caſe of a young man who had ſerved Mr. *Metcalfe*, an attorney and ſcrivener in *Wood-ſtreet*; *Metcalfe*, during the term of five years ſpecified in the indentures of apprenticeſhip, practiſed in both capacities; but the covenant in the articles being to inſtruct the apprentice in the art of a ſcrivener only, the judges refuſed to admit him as an attorney. *Barnes* 39, 4[illegible].

Every perſon ſo bound, to be during the whole time actually employed by ſuch attorney.

Every perſon bound by contract in writing to ſerve any attorney as by the ſaid act is directed, ſhall during the whole time and term of ſervice ſpecified in ſuch contract continue, and be actually employed by ſuch attorney, or his agent, in the proper buſineſs, practice or employment of an attorney. *Same ſtat.* §. 8.

If before the expiration of the time the attorney die, &c. or the clerk be diſcharged by, &c.

Provided if any ſuch attorney, to or with whom any ſuch perſon ſhall be ſo bound, ſhall happen to die before the expiration of ſuch term, or diſcontinue or leave off his practice, or if ſuch contract ſhall by mutual conſent of the parties be cancelled, or ſuch clerk ſhall be legally diſcharged by rule of the court before

before the expiration of ſuch term, and the ſaid clerk ſhall in any of the ſaid caſes be bound by another contract or contracts in writing to ſerve, and ſhall accordingly ſerve in manner beforementioned, as clerk to any other ſuch practiſing attorney or attornies as aforeſaid, during the reſidue of the ſaid term of five years, ſuch ſervice ſhall be deemed and taken to be as good, effectual and available, as if ſuch clerk had continued to ſerve as a clerk for the ſaid term, to the ſame perſon to whom he was originally bound, ſo as affidavit be duly made and filed of the execution of ſuch ſecond contract or contracts, within the time and in like manner, as is before directed concerning ſuch original contract. *Same ſtat.* §. 9.

and be bound to ſerve for the remainder of the time, ſuch ſervice to be good.

So as affidavit be made, &c. of the execution of the articles.

Every perſon who ſhall become bound as a clerk as aforeſaid, ſhall, before he be admitted an attorney, cauſe an affidavit of himſelf, or ſuch attorney to whom he was bound as aforeſaid, to be duly made, and filed with the officer before appointed, that he hath actually and really ſerved and been employed by ſuch practiſing attorney, to whom he was bound as aforeſaid, or his agent during the ſaid whole term of five years. *Same ſtat.* §. 10.

Before admittance of an attorney, affidavit to be made and filed of actual ſervice.

If any ſworn attorney ſhall act as agent for any perſon or perſons not duly qualified to act as an attorney or ſolicitor as aforeſaid, or permit or ſuffer his name to be any ways made uſe of upon the account, or for the profit of any unqualified perſon or perſons, or ſend any proceſs to ſuch unqualified perſon

Attorney acting as agent or permitting his name to be uſed for or ſending any proceſs to any unqualified perſon, thereby

to enable him to appear or act as an attorney, to be struck off the roll.

son or persons, thereby to enable him or them to appear, act or practice in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court, from whence any such process did issue, and proof made thereof upon oath to the satisfaction of the court, that such sworn attorney had offended therein as aforesaid, then every such attorney so offending shall be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case, and upon such complaint and proof made as aforesaid, it shall be lawful for the said court to commit such unqualified person, so acting or practising as aforesaid, to the prison of the said court, for any time not exceeding one year. *Same stat.* §. 11.

And the unqualified person to be committed

None but attornies to practise at general or quarter-sessions.

No person shall act as a solicitor, attorney, or agent, or sue out any process at any general or quarter-sessions of the peace, either with respect to matters of a criminal or of a civil nature, unless such person shall have been heretofore admitted an attorney of one of the courts of record at *Westminster*, and duly inrolled pursuant to *stat.* 2 *Geo.* 2. *c.* 23. or be hereafter admitted an attorney and inrolled as aforesaid, pursuant to this act, or such other law as shall be then in being, and unless such person shall continue so entered on the roll at the time of such his acting in the capacity aforesaid; but every person, who shall so act, not being admitted and inrolled as aforesaid, shall be subject to a penalty

nalty of 50*l.* to be recovered by action of debt, bill, *&c.* by any perſon, who ſhall ſue for the ſame, within 12 months after the offence committed, with treble coſts of ſuit. And if any attorney ſhall permit any perſon, not being admitted and inrolled as aforeſaid, to make uſe of his name in the courts of general or quarter-ſeſſions as aforeſaid, ſuch attorney ſhall be ſubject to the like penalty of 50 *l.* to be recovered in manner aforeſaid. *Same ſtat.* §. 12.

under penalty of 50*l.*

No attorney to permit an unqualified perſon to uſe his name at the ſeſſions under the like penalty.

By *ſtat.* 2 *Geo.* 2. *c.* 23. §. 22. " Every proceſs for arreſting, and every writ of execution, or ſome label annexed, and every warrant upon ſuch proceſs, ſhall, before ſervice or execution, be ſubſcribed or indorſed with the name of the attorney, clerk in court or ſolicitor, by whom ſuch proceſs, *&c.* ſhall be ſued forth; and where ſuch attorney, *&c.* ſhall not be the perſon immediately imployed, then alſo with the name of the attorney ſo immediately imployed: and every copy of any writ ſerved upon any defendant ſhall before ſervice be ſubſcribed with the name of the attorney immediately imployed."

Name of attorney to be written on every writ.

Motion to ſtay proceedings, becauſe the copy of the writ with which the defendant was ſerved, had not attorney's name to it. *Pract. Reg. C. P.* 440.

No attorney's name to copy of writ.

Rule to ſhew cauſe why proceedings ſhould not be diſcharged with coſts. The objection was, that no attorney's name was ſet to the ſheriff's warrant as required by act of parliament; but by the court; the warrant is not void, the act of parliament is directory

Proceedings not to be diſcharged, tho' attorney's name is not to the ſheriff's warrant.

 only;

only; the sheriff is blameable, but the party must not suffer for his default. *Barnes* 412. *Pract. Reg. C. P.* 441.

Attorney's name to the writ, tho' not to the warrant, sufficient.

Motion that proceeding might be stayed, the attorney's name not being to the warrant made by the sheriff, tho' it was to the writ on which the warrant was made. Rule to shew cause. The court (*Fortescue A.* absent) said, that as the attorney's name was to the writ, it was sufficient, but that till the *Stat.* 12 *Geo.* 2. *c.* 13. the not inserting the name of the attorney in the warrant was bad, and thought some former determinations on this head, not declaring the process void, were quite wrong. *Pract. Reg. C. P.* 442.

Writ not void tho' without an attorney's name.

Motion to stay proceedings because no attorney's name was set to the writ, denied. *Barnes* 407. *Pract. Reg. C. P.* 441. *Rep. & Cas. Pract. C. P.* 102.

Process delivered without filacer's name.

Motion to stay proceedings upon process delivered without *Filacer's* name being put thereto; court said the act of parliament did not require it; so no rule was granted. *Rep. & Cas. Pract. C. P.* 106.

Provided that nothing herein contained shall extend to deprive the attornies of the dutchy of *Lancaster*, or of the courts of great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster* and *Durham*, from acting within their respective jurisdictions. *Same stat.* §. 13.

By statute 17 *Geo.* 3. *c.* 37. further time is given for the filing affidavits of the execution of contracts of clerks to attornies, to *Mich.* term. 1777.

An

Attorney not attending, &c. to have no privilege.

An attorney that has not been attending his employment in this court by the ſpace of one year, unleſs hindered by ſickneſs, ſhall not be allowed his privilege of an attorney. *Mich.* 1654.

Obſervations on rule of Mich. *term,* 1654, *touching the privilege of an attorney being free from arreſt.*

It is obſervable, that the above rule or order of court, was made in times very unfavorable to perſonal as well as public liberty, though that ſpecious pretence was given out and received as the ſole motive for cauſing that extraordinary *Epocha*, in the hiſtory of this country, called the uſurpation.

A rule therefore made at ſuch a period of anarchy and lawleſs confuſion ought not, in my humble opinion, to be conſidered as ſufficient authority, or indeed as any authority at all, much leſs as the ground and reaſon for over-ruling the privilege in queſtion; will it not be too much to eſtabliſh this remnant of lawleſs power, unſanctified by any ſubſequent act, either of a court of juſtice, or of the legiſlature, (without one or other of which authorities, I believe it will be difficult to produce an approved precedent of any rule, order, act, judicial or legal, being adopted, or even countenanced by courts of juſtice at this day, eſpecially in a matter of perſonal privilege, and ſuch two as may eventually affect the property or intereſt of every individual ſubject of this kingdom.)

And indeed at the time, when the above old and diſuſed rule was conſidered as authority, it ſeems to have militated, even then, with a much more ſuperior authority, viz. *ſtat.* 1 *Hen.* V. chap. 4. whereby no under-

ſheriff

ſheriff may practice as an attorney, during his employment in the ſaid office, upon pain of excluſion, from being an attorney, and from being re-admitted ever after.

So that if a gentleman of the profeſſion acts now-a-days as under-ſheriff, he runs the riſque of not only being ſtruck off the roll of attornies, but alſo of being precluded of all poſſible chance of being reſtored, at any future period of his life, by any means whatever; for if he does practice within the year of his being under-ſheriff, *ſtat. Hen.* V. obliges the judges to ſtrike him off the roll; and if he does not practice for a year, they declare themſelves authorized ſo to do, by the practice of the court, under the above old, diſuſed, and I may add, abuſed rule of 1654.

The judges in the time of princeſs *Elizabeth*, that glorious queen of *England*, were of opinion, that as long as an attorney remains ſuch on record, though he does not alledge in his plea of privilege, that he has any clients, or that he proſecutes or defends any cauſes, at the time of an action being brought againſt him, and wherein he is arreſted, he ought to have, and be allowed his privilege; for if he is not qualified to be an attorney, the court will ſtrike him off the roll, on motion, and cauſe ſhewn, that he ought ſo to be. See *Lutw.* 1667. and the term of a writ of privilege for an attorney, in *Raſt. Entr.* 469. b.

The whole court of common pleas, during the time Lord *Camden* preſided therein,

were unanimously of the above opinion, for the same reason; and therefore allowed an attorney of that court his privilege of freedom from arrest, in a civil suit, on its being verified to the satisfaction of the court, that his name remained of record, on the roll of attornies of that court, as an attorney thereof.

Not to be lessee in ejectment nor bail.

No attorney to be lessee in an ejectment, nor bail for a defendant in this court. *Mich.* 1654. *M.* 6 *Geo.* 2.

No changing attorney without rule or order.

No person without rule of court, or order of a judge or prothonotary, and notice to the adverse party or his attorney, shall change or shift his attorney; and such attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *Mich.* 1654.

And his bill paid.

The court will not permit an attorney to be changed in a cause, and another attorney appointed in his stead, till his bill of fees and disbursements be settled and paid. *Barnes* 40.

Attornies not to shift from one prothonotary's office to another.

No attorney, without leave of the court, shall shift from the prothonotary's office where first sworn and settled; and no prothonotary shall suffer such attorney to enter any of his causes in his office contrary to his rule. *Trin.* 21 *Car.* 2.

But see now the following rule.

In the Common Pleas.

Trinity Term 10 *Geo.* III.

WHEREAS *William Mainwaring* esq; chief prothonotary, *John Floyer* and *Anthony Dickins* esqs; the two other prothonotaries

notaries of this court, have agreed, that the fees, perquiſites and profits, ariſing from the buſineſs tranſacted in their reſpective offices, except certain peculiar fees belonging to the chief prothonotary, ſhall be equally divided between them, and have propoſed, that their ſaid offices ſhall be carried on in one place, and as one office; and *Henry Fothergill*, *Henry Paramor*, and *Henry Barnes*, the ſecondaries to the ſaid prothonotaries, have come to the like agreement with reſpect to the fees, perquiſites, and profits of their reſpective offices (except certain peculiar fees belonging to the ſecondaries to the chief and ſecond prothonotaries) and have propoſed, that their ſaid offices ſhall be carried on in one place, and as one office, in caſe this court ſhall approve the ſaid agreements and propoſals; and the right honourable the earl of *Litchfield*, as *cuſtos brevium* of this court, hath ſignified his aſſent thereto, and this court having taken the premiſſes into conſideration, and being of opinion that the ſame will be for the advantage of the ſuitors, doth approve the ſaid agreements and propoſals, and think fit and order, that the ſame be carried into execution; and that from and after the feaſt of *All Souls* next, the names of the reſpective prothonotaries as heretofore ſeverally put upon proceedings in the ſaid court, be omitted, and ſuch proceedings be only intituled "In the *Common Pleas*," and that any of the ſaid three prothonotaries ſhall and may proceed on and determine all or any references and benefits of this c urt, which ought

ought to be tranſacted by the prothonotaries thereof, unleſs this court ſhall give particular directions concerning the ſame.

The clerk of the warrants to certify to the ſeal office, the names of ſuch attornies that have diſcontinued, and are forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms paſt; and thereupon no ſuch perſon ſhall have a writ of privilege or attachment ſealed until they have the ſaid writ ſigned by the clerk of the warrants, to teſtify that their names are on the roll, for which no fee is to be paid. *Trin.* 29 *Car.* 2.

Attornies who have diſcontinued, forejudged, or put out of the roll, not to have writ of privilege or attachment.

And now the ſealer does not put the ſeal to any writ of privilege or attachment before it is marked by the clerk of the warrants.

Writ of privilege to be ſigned by the clerk of the warrants.

An attorney has the privilege of ſuing by attachment of privilege, and of being ſued by (*b*) bill in manner herein after mentioned. To this privilege there are ſome exceptions, as 1. At the king's ſuit, (but in a *qui tam* he has his privilege.) 2. In a real action. 3. Where he ſues, or is ſued, *in auter droit* as heir, executor or adminiſtrator. 4. Where he joins, or is joined with another. 5. Where there is not the ſame remedy in this court, as in the caſe of a foreign attachment in *London*. 6. When he is ſued by an attorney of another court, *viz.* an attorney of

Privilege of an attorney as to ſuing and being ſued. See Gilb. Hiſt. C. P. 207, &c.

(*b*) Though demanded under 40*s*. Barnes 158, 159. 2 Wils. Rep. 44.

this

this court sued by an attorney of *B. R. et vice versa*, for the general rule is, that privilege takes away privilege; but then it ought to be for a debt really due, and not on a note colourably indorsed without consideration, in order to deprive the defendant of his privilege; for this is an abuse of privilege in the plaintiff, who thereby becomes unworthy of any privilege. *Barnes* 44. If an attorney of one court hath cause of action against another attorney of the same court, he ought to sue by bill, and not by attachment of privilege; for it seems needless to send a writ to the sheriff to bring in a defendant, who is presumed to be standing at the plaintiff's elbow in his own court.

Attorney of *Common Pleas* by entering into a bail bond in an action in *B. R.* waves his privilege of being sued in *C. B.* *Barnes* 117.

Attorney not bound to serve in the militia.

On hearing counsel for Mr. *Heaton*, an attorney *C. B.* and for the deputy lieutenancy, the court granted a writ of privilege to excuse Mr. *Heaton* from serving in the militia of the city of *London*, the service being personal. *Mich.* 14 *Geo.* 2. *Barnes* 42. Privilege from serving the office of constable;

nor constable, &c.

though there be a custom for persons to be chosen into that office in respect of their estates, or otherwise, for no custom shall be intended to be more antient than that of this court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Vent.* 16, 29. 2 *Keb.* 477, 508. 1 *Lev.* 265. *T. Raym.* 179. For privilege in other respects, see *Townsend's*

Townsend's Tables 452, 453. *Cornwall's Tables* 432, 433.

All attornies of this court should be admitted of some inn of court, or *Chancery*, and take chambers there, (if they conveniently may be had) else lodgings in some convenient place near the said inns, and leave notice in writing with the butler or porter of such inn where their lodgings are, except such attornies, who are inhabitants or housekeepers in *London*, *Westminster*, *Southwark*, or the suburbs thereof, and liberty of the *Tower* of *London*, and *St. Katherine's*; or are attornies of any courts within the said cities, town and liberty. *Mich.* 1654. *Trin.* 29 *Car.* 2. *Mich.* 4 *Annæ.*

Attornies to be admitted of some of the inns of court.

Except.

Clerk of the warrants is to cause an alphabetical book to be prepared and kept in his office, for inspection *gratis*; wherein every practising attorney, resident in *London* or *Westminster*, or within ten miles thereof, shall have his name and place of abode, or some place within the said cities, or one of them, where he may be served with the proceedings of court: and if copy of such as do not require personal service, be left at place *last* (*i*) entered, with *any* person there; that shall be deemed good service. *Hilary* 9 *Geo.* III.

(*i*) If no entry be made, fixing up any of the said proceedings, in the Prothonotary's office, No. 2. *Tanfield Court*, *Inner Temple*, (unless *personal* service be required) shall be deemed sufficiently served. Same rule.

Every

Each attorney pays 8d. *a term to the clerk of the warrants.*

Every attorney of the court pays to the clerk of the warrants 8*d.* a term, *viz.* 4*d.* a term for the puisne judges (to be distributed in charity) and 4*d.* a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment to be marked, or warrant of attorney to be filed, he must pay the arrears (if any) of his termage.

Attorney restored, who had been struck out of the roll at his own request.

Mr. *Moody*, an attorney of *Hampshire*, having at his own request been struck out of the rolls of attornies, was, upon his own motion in the treasury chamber, and producing an affidavit of his reasons, restored to the office and privilege of an attorney, he consenting not to take advantage of his privilege against any action then depending against him, if there was any. *Trin.* 16 *Geo.* 2. *Barnes* 42, 43.

Attorney answerable for his agent.

A country attorney is answerable to his client for his agent. *Barnes* 37.

Matters not to be transacted in the country.

Where country attornies are concerned, declarations, pleas, and other proceedings, should not be delivered and carried on in the country, but by the agents in town.

Declaration.

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly done, and a *Non-pros* signed for want of a declaration, the *Non-pros* is irregular, and may be set aside; for by the practice of the court, the declaration should have been demanded of the agent in town.

If

If the agent of the plaintiff's attorney gives the agent for the defendant time to plead, the country attorney cannot sign judgment till that time be expired. *Plea.*

A plea delivered in the country is irregular, and judgment may be signed. See *Barnes* 251. *Plea.*

If the country attornies agree that the issue shall be delivered in the country, and it is notwithstanding tendered in town, and not paid for by the agent, judgment may be signed, for the agreement is void. *Barnes* 251. *Issue.*

But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the issue in the country, and if not paid for there, may sign judgment. *Issue.*

Notice of trial must be given in town, but a countermand may be given in the country. *Notice of trial. Countermand.*

In order to be admitted an attorney, you must make an affidavit of having faithfully served your time out; having done this, or indeed before, take that part of the articles executed by your master, to one of the judges chambers, who will (*k*) examine whether you are qualified to be admitted; you must get the deputy clerk of the warrants N°. 6. *Clifford's Inn*, to attend the judge with the original affidavit of the due execution of your articles. Some morning in

(*k*) See *Ante* 37.

term time attend *Westminster* hall to be sworn; this done get your admission engrossed on a treble 40*s.* stampt piece of parchment, signed by the judge who examined you. The expences out of pocket are about seven guineas: See *Rayn. Read.* on *Stat.* 4to. p. 108.

Sheriffs.

AS they are bound to execute the process of the court, and punishable by the court for misbehaviour in executing the same, they are generally esteemed and looked upon as officers of the court.

Every sheriff to make a deputy on record in court.

Every sheriff shall make yearly a deputy on record, in the *Chancery*, *King's Bench*, *Common Pleas*, and *Exchequer*, before they shall return any writs, to receive all manner of writs and warrants delivered to them. *Stat.* 23 *H.* 6. *c.* 10.

Every sheriff is to make and enter on record a deputy to receive all manner of writs and process. *Mich.* 1654. *Hill.* 14, 15, and *Hill.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2, *Com. Rep.* 516. *pl.* 213.

Deputy to have his name and place of abode in London *or* Westminster *set up in the office of the clerk of the warrants.*

Each deputy yearly to have his name and place of residence in *London* or *Westminster*, set up in the office of the clerk of the warrants. *Mich.* 1654.

To give his attendance in Westminster

Sheriffs deputies are to give their attendance in *Westminster-Hall* daily in term-time, that

that they may with more conveniency dispatch the duty belonging to their respective offices. *Mich.* 1654. *Hil.* 14 & 15 and *Hil.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2.

Hall *in Term time.*

Sheriffs are not to deliver out any warrants before the writs be sued forth and delivered to them. Nor deliver out any blank warrants. *Mich.* 1654. *Hil.* 14 & 15 *Car.* 2. *Trin.* 1 *Jac.* 2.

Sheriffs not to deliver out warrants before writs delivered to them, or blank warrants. Stat 43 Eliz. c. 6. 6 Geo. 1. c. 21.

No under-sheriff to practice as an attorney during such his imployment. *Stat.* 1 *H.* 5. 4. *Mich.* 1654. *Stat.* 22 *G.* 2. *c.* 46. § 14.

No under-sheriff to practice as an attorney.

The sheriff, for serving any execution upon the body, lands, goods or chattels, shall have 12 *d.* in the pound where the sum exceeds not 100 *l.* and if it does exceed, then 6 *d.* for every pound exceeding 100 *l.* that he shall levy, or take the body in execution for. (*l*) *Stat.* 29 *Eliz.* *c.* 4.

Sheriff's fees on executions.

This act shall not extend to *poundage* on *Ca. Sa.* at the suit of any sheriff, or other crown officer upon bail bond on prosecution for duties to the king, or penalty for preventing clandestine running or receiving prohibited goods, or where poundage would not

(*l*) This printed statute is wrong, for the parliament was held 28 *Eliz.* *T. Raym.* 1. *Pl. Com.* 303. *Anon.* 294. pl. 303. 2 *Mod.* 242. *Lutw.* 203, 1117. *Skin.* 364.

be due, if proceedings were carried on in name of the crown. *7 Geo.* III. chap. 29.

On writ of Possession.

On executing a writ of *Habere facias possessionem*, the sheriff shall not take above 1*s.* in the pound, where the rent exceeds not 100*l. per annum*; and 6*d.* in the pound for every pound over and above. *Stat. 3 Geo.* 1. *c.* 15. §. 16.

On Capias ad satisfaciendum

On executing a *Capias ad satisfaciendum*, the sheriff to take poundage only for the real debt, on penalty of treble damages, and 200*l.* The real debt to be mark'd on the back of the writ. *Same stat.* § 17.

Sheriffs to indorse attorney's name on warrants.

Every sheriff, or other officer who shall make out any warrant upon any writ, process or execution, and shall not subscribe or indorse the name of the attorney who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or other officer, by the court; one moiety to the king, the other moiety to the party aggrieved by such omission. *Stat.* 12 *Geo.* 2. *c.* 13. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

Sheriff not returning process within 6 days after service of rule, to pay costs.

If any sheriff, under-sheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of process, shall not return the same, or bring in the body within four days after, *Barnes*, 102. See *Id.* 400. *H. 7 Geo.* III. *Barnes* 494, after service of a rule of this court for that purpose, he shall be liable to pay the costs occasioned by such neglect. *Hil.* 8 *G.* 1.

Service on the under-sheriff sufficient.

Service of the rule on the under-sheriff, or on one who really acts as under-sheriff, though he be not under-sheriff, is sufficient

to

to ground attachment against the sheriff. *Barnes* 405.

When a new sheriff is chosen, yet the old sheriff continues sheriff of the county till the new sheriff is sworn, and he receives a writ of *Supersedeas.*

Old sheriff to continue till new one sworn.

On the decease of any sheriff the under-sheriff is to act in his name till another be appointed. *Stat.* 3 *Geo.* 1. *c.* 15. §. 8.

On the death of a sheriff the under sheriff to act till a new one appointed.

The sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord whereof is intitled to the return of writs, shall (if required by such lord) within one month after such request, nominate and appoint one or more deputy or deputies, at the costs of such lord, to be resident at some town or place in or near such franchise or liberty, to be appointed by the lord chancellor and chief justice of *B. R.* and *C. B.* or one of them hereby authorised to appoint such town or place, and to settle what costs shall be paid therefore by such lord; and such deputy or deputies shall reside at such town or place so to be appointed, and have authority in the sheriff's name to receive and open all such writs and process (the execution or return whereof doth belong to the lord of such franchise or liberty), and in the name and under the seal of the sheriff, to issue out such warrant or warrants to such lord as by law is requisite for the due execution of such writ or process; and such deputy or deputies is and are required, on tender of such writ or process, to receive and open the same, and

Sheriff, on request and cost of a lord of a franchise or liberty, to appoint a deputy to reside at some place in or near the franchise.

Place and costs to be appointed and settled by lord chancellor, &c.

Deputy to receive writs, and in name and under seal of sheriff to issue warrants to the lord of the franchise.

issue such warrants thereon without delay, in such manner and form as the sheriff may or ought to do, without taking any further fee than now due and accustomed for such warrant; on pain that every such sheriff or deputy guilty of any wilful neglect or default sha'l be punished as for a contempt of court, and make satisfaction to the party damaged. *Stat.* 13 *Geo.* 2. *c.* 18.

Taking no more than the accustomed fees.

Punishment of sheriff's deputy making wilful neglect.

High sheriff can appoint no more than one under sheriff extraordinary. 2 *Wils.* 378.

Sheriff by indenture and schedule to turn over all writs, &c. to his successor.

Or make satisfaction to party injured.

All sheriffs of any county, city, liberty, division, town corporate, or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they, shall sustain by such neglect or refusal. *Stat.* 20 *Geo.* 2. *c.* 37.

Sheriff not liable to return any writ, unless required within 6 months after expiration of his office.

No sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office. *Same stat.*

Of

Of the four terms.

THERE are four terms in the year, during which this court sits, *viz.* *Michaelmas* term, *Hilary* term, *Easter* term, and *Trinity* term; the two first are call'd fix'd terms, as constantly falling on certain fix'd days in the year, the two latter terms are called moveable terms, *Easter* term being governed by *Easter* day, and *Trinity* term being governed by *Corpus Christi* day, both which are moveable feasts. *Hilary* and *Trinity* terms are called issuable terms, for that in them issues are made up for trials at the assizes which respectively follow those terms.

The four terms.

Fixed and moveable terms.

Issuable terms.

Instr. cler. 21, 22.

Michaelmas term begins on the sixth of *November*, if not *Sunday*; if *Sunday*, on the seventh (its essoin-day being the third day of *November*: The morrow of *All Souls*) and ends on the twenty-eighth day of *November*, if it be not a *Sunday*, but if a *Sunday*, then on the morrow following. This term, before the statute 16 *Car.* 1. *c.* 6. began on the ninth day of *October*, and had eight returns, which by that statute are reduced to six, and before the *stat.* 24 *Geo.* 2. *c.* 48. began on the twenty-third day of *October*, and had six returns, which by that statute are reduced to four.

Michaelmas *term.*

Hilary *term.* *See Spelm. Rem* 82. *Instr. cler.* 21.

Hilary term begins on the twenty-third day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eight weeks on which *Michaelmas* term ended, its essoin day being the twentieth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the same day of the week on which *Michaelmas* term began.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm Rem.* 86.

Easter *term.* *Instr. cler* 21.

Easter term begins on the *Wednesday* fortnight after *Easter-day*, its essoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after Ascension day.

In the *Exchequer* it begins eight days before the full term in the other courts. *Speln. Rem.* 86.

Trinity *term.*

Trinity term begins on the *Friday* next after *Trinity Sunday*; and though that day should happen to be the feast of St. *John* the *Baptist*, the term must then begin, for by the *stat.* 32 *H.* 8. *c.* 21. the full term shall begin on the *Friday* next after *Corpus Christi* day; the essoin-day is the *Monday* preceding. It ends on the *Wednesday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feast of St. *John* the *Baptist*, and then it must be adjourned on the *Tuesday* to the *Thursday* following. This term was limited and settled as it now

is,

is, by the said *stat.* 32 *H.* 8. it having before more returns, and a different commencement.

In the *Exchequer* it begins four days before the full term in the other courts. *Spelm. Rem.* 86.

Essoin-day.

The essoine-day (from *essoine*, or *exonnie*, an *excuse*, where the defendant cannot conveniently appear) is said to be the first day of the term, and on that day one of the judges goes down to *Westminster* for the keeping essoins, profers, returns, *&c.* But full term begins always the fourth day after inclusive, except in *Trinity* term, when it begins on the fifth, by reason of *Corpus Christi* day, which is *dies non juridicus.*

The essoin-day is the first day of term, but in common parlance the first day the court sits is the first day of the term; so where promise was made, the day after the essoin-day of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he must do it the same term, not that time twelve months. *Bishop* and *Harcourt*, *Cr. El.* 210. *pl.* 6. *Sav.* 124. *Ander.* 240. *pl.* 256. *Leon.* 210. *pl.* 295. 5 *Rep.* 37. 2 *Danv. Abr.* 9. *id.* 225. *pl.* 12. 3 *Danv. Abr.* 46. *pl.* 1.

Writ of adjournment. *Cro. Jam.* 445, 446.

On a writ of adjournment nothing can be done at the day but to read the writ, and adjourn all appearances and proceedings till the day appointed, and no appearance can be made, or other matters done then, and because

cause an imparlance was entered as on that day, it was held error.

Judgment.

A judgment relates to the essoin-day, which is the first day to law, and not to the *Quarto die post*, which is but a day of grace; *ideo* a judgment of *Hilary* term had precedence to a statute acknowledged. 22 *Jac.* *Stamford* and *Cooper*, *Cr. Car.* 102. *Hetl.* 72. *Hut.* 93. 1 *Rep.* 94.

Michaelmas

Michaelmas term, which contains three weeks and two days, hath four returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. On the morrow of *All Souls*.	On ( ) next after the morrow of *All Souls*.
2. On the morrow of Saint *Martin*.	On ( ) next after the morrow of St. *Martin*.
3. In eight days of Saint *Martin*.	On ( ) next after eight days of St. *Martin*.
4. In fifteen days of Saint *Martin*.	On ( ) next after fifteen days of St. *Martin*.

Hilary term, which contains three weeks complete, hath four returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. In eight days of Saint *Hilary*.	On ( ) next after eight days of St. *Hilary*.
2. In fifteen days of Saint *Hilary*.	On ( ) next after fifteen days of St. *Hilary*.
3. On the morrow of the purification of the blessed *Mary*.	On ( ) next after the morrow of the purification of the blessed Virgin *Mary*.
4. In eight days of the purification of the blessed *Mary*.	On ( ) next after eight days of the purification of the blessed Virgin *Mary*.

Easter

Easter term, which contains three weeks and six days, hath five returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. In fifteen days of *Easter*.	On (*Wednesday*) next after fifteen days of *Easter*.
2. In three weeks from the day of *Easter*.	On ( ) next after three weeks from the day of *Easter*.
3. In one month from the day of *Easter*.	On ( ) next after one month from the day of *Easter*.
4. In five weeks from the day of *Easter*.	On ( ) next after five weeks from the day of *Easter*.
5. On the morrow of the ascension of our Lord.	On (*Monday*) next after the morrow of the ascension of our Lord.

Trinity

Trinity term, which contains twenty days, hath four returns.

By ORIGINAL.	*By* ATTACHMENT, BILL, &c.
1. On the morrow of the Holy *Trinity*.	On (*Friday*) next after the morrow of the Holy *Trinity*.
2. In eight days of the Holy *Trinity*.	On ( ) next after eight days of the Holy *Trinity*.
3. In fifteen days of the Holy *Trinity*.	On ( ) next after fifteen days of the Holy *Trinity*.
4. In three weeks from the day of the Holy *Trinity*.	On (*Wednesday*) next after three weeks from the day of the Holy *Trinity*.

All

All the essoin-days in *Easter* term except the last, which is "*the morrow of the ascension of our Lord*" and all the essoin-days in *Trinity* term except the first, which is "*the morrow of the Holy Trinity*," fall on *Sundays*.

Essoin days in Easter *and* Trinity *terms are* Sundays, *except.*

All writs issuing out of this court, grounded upon original writs out of *Chancery*, must be made returnable on general return days as on the morrow of the Holy *Trinity*; but writs of attachment, and writs subsequent thereto, and writs grounded on bills filed against attornies, and such officers of the court as are intitled to the privilege of the court, or members of the house of commons, writs of *Habeas corpus*, &c. must be made returnable on a day certain in full term, as on *Friday* next after the morrow of the Holy *Trinity*. But care must be taken that they be not made returnable on any of the following days, which are *Dies non juridici*, viz. the feast of the *Purification* in *Hilary* term, *Ascension day* in *Easter*, and the feast of St. *John* the *Baptist*, if it happen in *Trinity* term (unless it be the first day of that term.)

Writs grounded on originals returnable on general returns.

Attachments, &c. on days certain.

Dies non juridici.

There must be at least fifteen days between the *Teste* and return of all original writs returnable in this court, and between the *Teste* and return of all ordinary writs sued and procured upon the same, except where altered by act of parliament.

Fifteen days between Teste *and return of original writs and writs subsequent.*

A *Capias ad respondendum*, not having 15 days between the *Teste* and return, set aside, but without costs, 2 *Wils.* 117. 3 *Wils.* 455. *Barnes* 427.

Cap.

Cap. ad respond. amended, there not being 15 days between the *Teste* and return thereof. 3 *Wils. Rep.* 454.

Notice on copy of writ served to appear at return, mentioning the day of the month, without adding *instant*, *next*, or 1757, sufficient; and former (*a*) doctrine on this subject exploded. *Barnes* 425.

And attachments of privilege.

An attachment of privilege at the suit of an attorney must also have fifteen days between the *Teste* and return.

Where writs of Ven. fac. Hab. cor. jur. Distring. jur. Fi. fac. *and* Ca. sa. *need not have* 15 *days between* Teste *and return.*

In all actions of debt, and other personal actions, actions of *Ejectione firmæ* for lands or tenements, after issue joined to be tried by a jury, and after any judgment had or obtained, there shall not need to be fifteen days between the *Teste* and return of any writ of *Venire facias*, *Habeas corpora juratorum*, or *Distringas juratores*, writ of *Fieri* (*b*) *facias*, or writ of *Capias ad satisfaciendum*, and the want thereof shall not be assigned for error; but not to extend to any writ of *Capias ad satisfaciendum*, whereon an exigent after judgment is to be awarded, or to a *Capias ad satisfaciendum* against the defendant to make the bail liable. 13 *Car.* 2. *stat.* 2. *c.* 2. § 6, 7.

Except a Ca. *sa. to ground an exigent, or make bail liable.*

(*a*) See *Barnes* 419.

(*b*) Rule absolute to quash writ of *Fi. Fa.* returnable on a *general* return, instead of a day certain, as it ought to have been, without costs, and defendant to bring no action. *Barnes* 213.

Of

Of commencing an action.

ALL actions in this court are either founded on originals out of *Chancery*; *Action by original.*

On attachments of privilege at the suit of attornies, or other officers intitled to the privilege of the court; *Attachment of privilege.*

On bills filed against such attornies or officers, or against members of parliament; *Bill.*

On writs of *Habeas corpus cum causa*, *Certiorari*, &c. removing causes out of inferior courts of record; Habeas corpus, *&c.*

On writs of *Recordari facias loquelam*, *Accedas ad curiam*, or writs of false judgment, removing causes out of inferior courts not of record. Re. fa. lo. *&c.*

In commencing actions in this court, It is to be considered, What causes of action require bail, and what persons are liable to be held to bail. *Of bail.*

Bail is not required of an (*a*) heir, nor of an executor or administrator, unless on a *Devastavit* grounded, as I apprehend, on a return by the sheriff to a *Fieri facias de bonis testatoris*, or a *Scire fieri* inquiry, and not on the bare suggestion of the plaintiff. *Gilb. Hist. C. P.* 37. *No bail of an heir, nor of an executor or administrator, unless on a* Devastavit *returned.*

In debt on a penal statute the defendant is not to be held to special bail. *Yelv.* 53. *Gilb Hist. C. P.* 37. *Barnes* 80. *Nor on a penal statute.*

Neither is bail required in debt on a bail-bond, *Nor on a bail-*

(*a*) The contrary held in *Pep. & Cas. Pract. C. P.* 8.

bond or recognizance of bail. bond, or recognizance of bail, for that would tend to bail *ad infinitum*. But see *Rep. & Cas. Pract. C. P.* 18. *Pract. Reg. C. P.* which seem *contra.*

In battery, conspiracy, or false imprisonment, no bail of course. In assault (*b*) conspiracy, or false imprisonment, no bail of course, without special motion and order. *Mich.* 1654. *Gilb. Hist. C. P.* 37. *Barnes* 76.

No bail for a malicious prosecution where the plaintiff was acquitted upon a defect in the indictment. In an action for a malicious prosecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. 2 *Keb.* 796. *pl.* 34. *Barnes* 76. *Rep. & Cas. Pract. C. P.* 148. *Pract. Reg. C. P.* 66.

Bail by order for criminal conversation. In an action for a criminal conversation with the plaintiff's wife, on an affidavit of the fact, a judge will grant an order to hold the defendant to bail for such sum as he shall think reasonable on the circumstances of the case and parties. *Barnes* 61. *Pract. Reg. C. P.* 63.

Bail in an action for mesne profits. On affidavit and application in the treasury, the judges have ordered the defendant to be held to bail in an action for mesne profits. *Barnes* 79, 85. See 87. *Pract. Reg. C. P.* 62.

In debt for rent. Defendant may be held to bail in an action of debt for double rent, by virtue of *Stat.* 4. *Geo.* 2. *c.* 28. §. 1.

Bail in trespass for enter- On an affidavit made, the defendant was

(*b*) *Barnes* 76. A judge at his chambers will order special bail if he thinks fit, which the defendant has a right to get discharged by application to the court, if not well founded. *Barnes* 61.

held

held to bail in an action of trespass, for entering the plaintiff's hop-ground, and taking and carrying away 20,000 hop-poles, to the plaintiff's damage of 40*l.* The court refused to discharge the defendant on a common appearance, and declared, tho' it was reasonable to have a judge's order in battery, there was none in this case. *Cook & al.* v. *Sankey*, *Trin.* 7 & 8 *Geo.* 2. *Rep. & Cas. Pract. C. P.* 106. *Pract. Reg. C. P.* 64. *Barnes* 65.

ing plaintiff's hop-ground, and taking away his hop-poles.

In slander no bail, except in slander of title, and then to be left to the discretion of the judge. *Mich.* 1654. *Barnes* 80.

No bail in slander, except slander of title.

Bail is not generally required in covenant, unless it be for payment of money. *Same rule.* *Barnes* 67, 78.

Nor in covenant, unless for payment of money.

But tho' the covenant be not for payment of money, if the plaintiff makes an affidavit of the sum he is damnified in by the breach of the covenant, the court will not discharge the defendant on a common appearance. *Barnes* 67. but *Barnes* 108, 109. seem *contra.*

Or damages ascertained by affidavit.

Defendant held to bail, where cause of action did not accrue till after the bankruptcy and the money due on a contingency, the same not being within any of the statutes of bankrupts. *Barnes* 113.

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant shall not be held to bail in the action of debt on the judgment. *Barnes* 107, 116. but if there was no bail in the original action, then bail must

Bail in debt on a judgment, if no bail in the original action; aliter if bail in the original action.

muſt be put in to the action of debt on the judgment. *Barnes* 71. *Com. Rep.* 556. *Pract. Reg. C. P.* 54, 56, 57. *Rep. & Caſ. Pract. C. P.* 32, 77.

The like tho' error brought on the judgment, and bail be put in on the writ of error.

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in ſuch action ſhall be held to bail if there was no bail in the original action; for though it may be ſaid the bail on the writ of error is a ſecurity for the plaintiff's demand, yet it is to be obſerved that there may be accidents whereby ſuch bail will not be liable; as that the writ may abate by the death of the chief juſtice, or the like.

After judgment reverſed by writ of error, defendant had a *Superſedeas*, but before diſcharged, was charged with new declaration at plaintiff's ſuit; and upon application to court was diſcharged by rule from new declaration, and her *Superſedeas* was allowed; after diſcharge plaintiff cauſed defendant to be arreſted and held to bail for former cauſe of action; whereupon court was moved to be again diſcharged by *Superſedeas*, upon entering common appearance: court was (*c*) divided in opinion, upon hearing council on both ſides. *No rule.* *Barnes* 499.

(*c*) The defendant was a *woman*, and therefore I think her having two judges in her favour, and being a caſe of liberty, ſhe ſhould have been diſcharged.

A pri-

A prisoner discharged by *Supersedeas* for want of prosecution shall not be held to bail in an action of debt brought on the judgment obtained in the cause wherein he was discharged. *Hil.* 8 *Geo.* 2. *Barnes* 116, *See the rule at large*, tit. *Prisoners.*

Prisoner discharged not to be held to bail in debt on the judgment.

If an action be brought against *baron* and *feme*, and the wife only be arrested, she shall be discharged on a common appearance; for otherwise the husband may contrive the imprisonment of the wife; 3 *Wils.* 124. but if both the husband and wife be arrested, she shall not be discharged until bail be put in (*a*) for both, for otherwise a woman may marry a man in gaol and defraud her creditors. *Barnes* 67. 68. *Sed qu': Rep. & Cas. Pract. C. P.* 17. *Barnes* 96, 100. 6 *Mod.* 17, 105. 7 *Mod.* 10, 63. *Lev.* 1, 216. *Barnes* 67, 68. *Sid.* 395. *pl.* 2. 2 *Keb. Rep.* 442. *pl.* 4. But see 10 *Mod.* 162.

Action against baron and feme, and wife only arrested, she shall be discharged on a common appearance. Alter *if both arrested.*

Husband and wife rendered after judgment, in discharge of bail wife released upon motion. 3 *Wils.* 124.

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unless it be on an attachment for a contempt (to which, bail must be taken by the court or a judge, and not by the sheriff) or in an action at the suit of an attorney, or any other person intitled to the privilege of

Attorney not to be held to bail unless for a contempt, &c.

(*d*) An attachment granted against an under-sheriff for detaining a married woman in prison till husband found bail for her. *Lat.* 224

G 3 another

another court, *viz. B. R.* or, for in such case the plaintiff's privilege takes away the defendant's. *Vide antea.*

Seamen and soldiers. *31 Geo. 2. c. 10. s. 28.*

By *stat.* 1 *Geo.* 2. *stat* 2. *c.* 14. §. 15. No (*) seaman to be taken out of his majesty's service, unless oath be made that the original cause of action amounted to 20*l. Barnes* 95, 114. and by the annual mutiny act, no soldier to be taken out of his majesty's service unless oath be made that the original debt amounted to 10*l. Pract. Reg. C. P.* 61. *Barnes* 114, 433. An outpensioner of *Chelsea* college, not being a soldier in actual service, is not a soldier within the meaning of the mutiny acts. *Pract. Reg. C. P.* 59, 60. *Barnes* 432. *Rep. & Cas. Pract. C. P.* 77.

No bail where the cause of action amounts not to 10l.

No person shall be held to bail upon any process issuing out of this court, where the cause of action does not amount to the sum of ten pounds or upwards; and in all cases where the cause of action shall not amount to ten pounds or upwards, the plaintiff shall not arrest the body of the defendant, but shall serve him personally with a copy of the process. *Stat.* 12 *Geo. c.* 29. §. 1, 2. *Stat.* 5 *Geo.* 2. *c.* 27. *Stat.* 13 *Geo.* 2. *c.* 18. All these acts are perpetuated by 21 *Geo.* 2. *c.* 3.

But defendant to be served with copy of process.

No special bail in Wales *or the counties Palatine, un-*

No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of the

(*) No volunteer mariner. *Stat.* 2 *Geo.* 3. *c.* 12. *sect.* 36.

courts

courts of record at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds and upwards, bail shall not be taken for more than the sum expressed in such affidavit. *Stat.* 11 & 12 *W.* 3. *c.* 9. *s.* 2.

less affidavit be made of the cause of action, and that the same amounts to 20l. and upwards.

A defendant not to be held to bail, on a discontinuance, in a meer action for same sum and cause, but common appearance to be accepted, and *Supersedeas* granted. *Barnes* 113.

After nonsuit in *B. R.* a common appearance ordered to be accepted in a new bailable action in *C. B.* *Barnes* 115.

Defendant held to bail *second* time, for *same* cause of *action*, after plaintiff had discontinued the first writ, by reason of a mistake. 2 *Wils.* 381.

Proceedings by original in actions not requiring bail.

If the cause of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in trespass, on which the plaintiff may declare in any county, or for any cause of action, as the case shall require. The filacer makes out the *Capias*, and procures the original from the cursitor, and returns and files it.

Where no bail required, a common clausum fregit *to be sued out. May declare thereon in any county, or for any cause of action.*

The Præcipe.

Præcipe *in treſpaſs.*

Middleſex, Capias for *W. P.* againſt *J. B.* late of the pariſh of St. *Clement Danes* in the county of *Middleſex*, taylor, broke the *Cloſe* at *Weſtminſter*.

J. R. *Returnable on the octave*
22 *Dec.* 1777. *of St.* Hilary.

The *Præcipe* is to be carried to the proper filacer, who will make out the *Capias*.

The Form of the Capias.

Capias *thereon.*

	s.	*d.*
Original	1	0
Filing	0	4
Capias	0	10
Duty	2	0
Seal	0	7
	5	3

GEORGE the third, &c. To the ſheriff of *Middleſex*, greeting. We command you, that you take *J. B.* late of the pariſh of St. *Clement Danes* in your county, *Taylor*, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, to anſwer *W. P.* (*f*) in

---

(*f*) Plaintiff declares in an action *qui tam*, &c. upon a *Cap. ad reſpond.* ſued out in his own name only, and held well enough 3 *Wilſ.* 141.

Barnes ſays in a *N. B.* that the practice of this court, is the ſame as ſettled in *B. R.* by the authority of the caſe of *Cuming* and *Davis*. *E.* 9 *Geo.* III. [illegible] 494, 495, the point ſettled ſeems to be, that plaintiff need not ſet out in proceſs, in whoſe or what right he ſues. Lord *Willes* when he differed in opinion from *Barnes's* book, always ſaid the *Court* and not *Barnes* was

in a plea, wherefore with force and arms he broke the *Close* of the said *W.* at *Westminster*, and did other injuries to him, to his great damage, and against our peace; and have there this writ. Witness Sir *William De Grey*, knight, at *Westminster*, the twenty-ninth day of *November* in the seventh year of our reign.

You may put four defendants in a writ; but there must be but one plaintiff, unless it be a joint action.

Then a copy of the process must be made with an *English* notice, subscribed as mentioned in the two next paragraphs, which copy must be served on the defendant.

Notice to be written on the copy of the process.

But by *stat.* 5 *Geo.* 2. *c.* 27. §. 4. (made perpetual by *stat.* 21 *Geo. c.* 3.) upon every copy of such process shall be written a notice of the intent and meaning of such service, to the effect following, *viz.*

The form of the notice.

C. D. You are served with this process, to the intent that you may, by your attorney

was mistaken; I take leave to join with the chief justice in his politeness on this occasion; for I am persuaded the case alluded to is the rummage of a dead man's papers; for it is impossible to say in what court it was determined; Mr. [illegible] was for defendant, Mr. Solicitor-General for plaintiff.—Now for my part, in the course of 20 years attendance in the court of *Common Pleas*, I never observed any advocates but *Serjeants* move there; and if it is said it was a case in *B. R.* then the *N. B.* is not very satisfactory. It seems therefore to be, as I observed before, the rummage of a dead man's papers; and I would have it expurged out of the next edition, lest it disgraces the best book of practice in this court.

appear in his majesty's court of *Common Pleas* at the return, thereof, being the twentieth of *January* 1778, [as the case shall happen to be] in order to your defence in this action.

The day of the return to be inserted though a Sunday.

The very day of the return of the process must be inserted, although it should happen to be a *Sunday*. *Barnes* 293, 294, 295. *Rep. & Cas. Pract. C. P.* 105, 106.

5 s. *for making and serving the copy.*

No more than 5 *s.* is to be taken for the making and serving a copy of such process, and no fee for the notice. *Stat.* 5 *Geo.* 2. *c.* 27.

In franchises the process to be served by the proper officer.

In particular franchises and jurisdictions the proper officer there shall execute such process. *Stat.* 5 *Geo.* 2. *c.* 27.

But if the process be not served by the proper officer, the court will not stay proceedings; the lord of the liberty may bring his action, if he thinks proper. *Barnes* 404. *Pract. Reg. C. P.* 345. *Rep. & Cas. Pract. C. P.* 96.

Capias, *and not original, to be served.*

The process, of which a copy is directed by the above statutes to be served on the defendant, must be a *Capias*, and not an original writ. *Barnes* 410.

Of serving process in a county palatine.

If the process be directed into a county palatine, the defendant is to be served with a copy of such process, and not with a copy of the mandate thereupon from the bishop or chancellor to the sheriff of the county. *Pract. Reg. C. P.* 334. *Rep. & Cas. of Pract. C. P.* 119. *Barnes* 406, but held otherwise in *Pract. Reg. C. P.* 343. *Rep. & Cas. Pract. C. P.* 38.

4 When

When the defendant is ſerved with a copy of a writ, there muſt be an *Engliſh* notice ſubſcribed as above directed, tho' the cauſe of action ſhould be above ten pounds, or the writ ſhould be a ſpecial *Capias.*

Where copy ſerved, it muſt be with notice, tho' action for above 10l. or writ ſpecial.

If the proceſs be againſt *baron* and *feme*, ſervice on the huſband is ſufficient for both; and if the huſband does not appear for himſelf and his wife, the plaintiff may enter an appearance for both. *Barnes* 400, 412.

Proceſs againſt baron and feme, ſervice on the huſband ſufficient.

But in a joint action againſt two or more defendants, each defendant muſt be ſerved with a copy of the proceſs.

In a join action each defendant muſt be ſerved.

Proceedings were ſtayed by the court, becauſe no attorney's name was ſet upon the copy of the proceſs ſerved upon the defendant. *Barnes* 415. *Rep. & Caſ. of Pract. C. P.* 102. *Pract. Reg. C. P.* 440, 441.

Attorney's name to be on copy of proceſs.

Service of proceſs, though made on the return thereof, is deemed well ſerved. *Hil.* 8 *Geo.* III. *C. B.* 10 *Feb.* 1768. *Wilſ. Rep.* 372.

It ſeems as if the court formerly (*g*) required, that proceſs ſhould be ſerved before the day of return; but they then differed as to the time of day, for in one (*h*) caſe they held, that ſervice of proceſs at ten o'clock in the evening, on the day of return, was good ſervice, for that there was no fraction of a day;

(*g*) See *Barnes* 415, 416, 424. *Rich. Pract. Reg.* 352. *C. Caſ. & Rep. Pract.* 52.

(*h*) *E.* 1 *Geo.* II. *C. B.* *Matthews* and *Partridge.* MS. Notes.

day; and in (*i*) another, it was alledged, that the service was at seven o'clock in the evening, of the day of return, and that the court was risen before the service; however the judges would not then presume, that the service was after the rising of the court, unless it was proved by affidavit; but now I apprehend, that, according to the abovementioned rule, if the process be served any time of the day whereon it is returnable, before nine o'clock in the evening, it will be sufficient.

Irregularity in process to be complained of before interlocutory judgment.

If there be any irregularity in the service of the process, or in the notice subscribed to the procef, the defendant must apply to the court before interlocutory judgment is signed. *Pract. Reg. C. P.* 347. See *Barnes* 211, 296, 269. *Rep. & Cas. Pract. C. P.* 152. See *Postea fol.*

And process to be annexed to affidavit.

If the defendant complains of any irregularity in the process, or notice subscribed, he must annex the copy to his affidavit.

Proceedings by original in actions requiring bail.

If bail required, affidavit to be made of cause of action.

If the cause of action amounts to ten pounds or upwards, affidavit must be made and filed of the cause of action. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21. *Geo.* 2. *c.* 3.

(*i*) *Hil.* 5 *Geo.* II. *C. B. Hayne* and *Cane.*

The

The form of an affidavit of a debt, in order to hold the defendant to bail.

Common Pleas.

H. H. of, *&c.* maketh oath, that *G. W.* late of, *&c.* is (*k*) justly and truly indebted to this deponent in the sum of 200 *l.* on one bond or obligation under the hand and seal of the said *G. W.* bearing date, *&c.* whereby the said *G. W.* is bound to this deponent in the penal sum of 400 *l.* conditioned for the payment of 200 *l.* and interest to this deponent, on the day of last past.

The form of the affidavit.

Sworn, &c.

Plaintiff, tho' convicted of perjury, may make an affidavit of debt, sufficient to hold defendant to bail, tho' he cannot be a witness. *Barnes* 116.

Affidavit of debt on a single sheet made in three causes not applicable to any one; there should be an affidavit on stamps in each cause, to hold defendant to bail; and therefore common appearances ordered to be excepted. *Barnes* 115.

This affidavit may be made before any judge of this court, or commissioner authorised to take affidavits in this court, or before the officer, who issues the writ or his deputy;

Before whom the affidavit to be made.

(*k*) *In* for *is*, common appearance ordered, 2 *Wils.*

puty;

puty; and for which affidavit 1 *s.* above the ſtamp-duties ſhall be paid, and no more. *Stat.* 12 *Geo. c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3.

Affidavit by adminiſtrator, that defendant is indebted in 40*l. as plaintiff believes*, and *as appears* by note; judge who had ordered a *common* appearance, to be re-attended. *Barnes* 74

Affidavit made by a third perſon muſt be (*l*) poſitive. *Barnes* 87, 91.

Affidavit by a third perſon, that defendant was indebted, as appears by a ſtated account, (*m*) *inſufficient. Barnes* 100.

Affidavit that defendant was indebted if the ſhip *Suſſex* was not *unavoidably* loſt, *prima facie* ſufficient, but affidavits read on both ſides controverting the fact. *Barnes* 87.

Affidavit that defendants were indebted *jointly*, not ſufficient to hold them to bail *ſeverally*. *Barnes* 70, 71.

Affidavit of one convicted of felony, not ſufficient to hold to bail, and not to be ſupplied by ſubſequent affidavits. *Barnes* 79. *Pract. Reg. C. P.* 49. 2 *Wilſ.* 225.

In caſe of bankruptcy affidavit of the debt muſt be *poſitive*, unleſs it appears that bankrupt refuſes to make the ſame. *Barnes* 91.

(*l*) But in the caſe of an executor *belief* is ſufficient. *id. ib.*

(*m*) But made *good* by another affidavit, that defendant owned the account. *id. ib.* So in caſe of a bond. " That money *appears* due, and that defendant *owned* the debt a year and a half ago." *Barnes* 82.

Obligee,

Obligee, in a bond conditioned to pay obligor, rent due from lessee, held to bail, upon obligor's affidavit, that the lessee was indebted to him in 2300*l.* for arrears of rent. 3 *Wils. Rep.* 154.

By the general rule and practice of this court, affidavits taken before attornies (as commissioners) in causes, wherein they were concerned for the parties in whose behalf such affidavits were made, have been deemed insufficient. See *Barnes* 45.

Affidavit to hold to bail, or of service of process, may be made before plaintiff's attorney, if a commissioner.

But an affidavit made in order to hold the defendant to bail before process sued out, or an affidavit of service of process where only a common appearance is required, may be sworn before the plaintiff's attorney, being a commissioner, and may be made use of for the purpose aforesaid. *Pas.* 13 *Geo.* 2. See *Barnes* 60. *Pract. Reg. C. P.* 12.

Matter of bail examinable by the court.

Notwithstanding the plaintiff makes an affidavit of his debt, or other cause of action, yet the matter of bail is examinable by the court.

On defendant's affidavit, that he *believed* the whole debt would appear to be paid, common appearance was allowed. *Barnes* 72.

Plaintiff leased to *Steven* lands in *Ireland*, defendant became bound to plaintiff by bond in penalty of 5000*l.* conditioned for *Steven*'s payment of rent to plaintiff; upon failure he made affidavit, that 2300*l.* was due to him for arrears of rent under said lease; it was by three judges, sufficient to hold defendant to bail. 3 *Wils.* 154.

The

The next thing is to make out a *Præcipe* for the filacer, which you must suit to the nature of your action, according to the following precedents.

A Præcipe *in debt.*

Middlesex. Command *G. W.* late of *Westminster* in your county, esq; (*n*) otherwise called *G. W.* of *Westminster* in the county of *Middlesex*, esq; that he render to *H. H.* 400 *l.* which he owes him, and unjustly detains.

Ret. on the morrow of All Souls.

J. B. [*the attorney*]
19 *Aug.* 1777.
Affidavit for 200 *l.*

The Capias *thereon.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Middlesex*, greeting. We command you, that you take *G. W.* late of *Westminster* in your county, esq; (*o*) otherwise called, (*&c.*)

Alias dict' *not necessary.*

(*n*) The *Alias dict'* is used where the debt arises by specialty, but it is said not to be necessary to be inserted, and that it may be and is better left out, and was so adjudged in this court in lord chief justice *Eyre*'s time, in an action upon a bail bond, *Darby* against *Minshull.*

On a Latin *bond the* Alias dict', *if used, must be in* Latin.

If the action be in debt on a bond, and the Obligation is in *Latin*, the *Alias dict'* (if inserted) must be also in *Latin*; as thus, Command *John Doe*, late of *London*, gentleman, otherwise called *Johannem Doe de London generosum.* *Barnes* 241. *Pract. Reg. C. P.* 322. *Rep. & Cas. of Pract. C. P.* 91.

(*o*) See the note in the former page.

if

if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster*, on the morrow of *All Souls*, to answer *H. H.* of a plea, that he render to the said *H. H.* four hundred pounds which he owes him, and unjustly detains, as it is said; and have there this writ. Witness Sir *William De Grey*, knight, *at Westminster*, the 7th day of *July* in the seventeenth year of our reign

Middlesex. Command *W. C.* late of the parish of *St. Clement Danes* in your county, tallow chandler, that he render to *W. D.* 30*l.* which he owes him, and unjustly detains. Command *C. M.* late of the same that he render to the said *W. D.* 50*l.* which he owes him, and unjustly detains.

Præcipe in debt against two defendants.

Officina brevium 27.

Ret. &c.

J. B.
10 *Jan.* 17[illegible]

A Præcipe against { *W. C.* for 30*l.* / *C. M.* for 50*l.*

On all *Præcipes quod reddat*, if the sum exceeds forty pounds, a fine is payable to the king in the following proportions:

Fines payable to the king.

	l.	*s.*	*d.*
From 40 pounds to 100 marks	0	6	8
From 100 marks to 100 pounds	0	10	0
From 100 pounds to 200 marks	0	13	4
From 133 6. 8. to 166 13 4.	0	16	[illegible]
From 166 13 4 to 200 pounds	1	0	0

And so consequently for every 100 marks more —	0	6	8
And for every 100 pounds more	0	10	0

Wherefore, if you would avoid the fine, draw out a *Præcipe* for a *Capias* in trespass with an *Acetiam*, in debt, in this manner:

Præcipe *for a* Capias *in trespass with an* Acetiam *in debt.*

Middlesex. *Capias* for *T. D.* against *A. S.* late of the parish of St. *Martin in the Fields* in your county, surgeon, broke the *Close* at *Westminster*; and also in a certain plea of debt upon demand for 80 *l.*

Ret' &c.

I. E. by *I. R.* 26 *May* 1777. } Affidavit for 40 *l.*

Common appearance ordered, to be accepted for want of an *Acetiam* in the *Præcipe* for the writ left with the filacer, tho' inserted in the *Cap. ad respond.* which was indorsed for bail. *Barnes* 117.

Capias *thereon.*

GEORGE the third, *&c.* To the sheriff of *Middlesex*, greeting. We command you, that you take take *A. S.* late of, *&c.* if he shall be found in your bailiwic, and keep him safely, so that you may have his body before our justices at *Westminster*, on to answer *T. D.* of a plea, wherefore with force and arms he broke the close of the said *T.* at *Westminster*, and did other wrongs to him, to the great damage of the said *T.* and against our peace; and also, that the said *A.* answer to the said *T.* ac-

 cording

cording to the custom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witness, *&c.*

Middlesex. *Capias* for *L. R.* against *L. K.* late of the parish of St. *James* in the liberty of *Westminster* in your county, widow, broke the close at *Westminster*; and also in case upon promise for 50 *l.*

Præcipe *in trespass, with an* Acetiam *in case upon promise.*

Ret'

GEORGE the third, *&c.* To the sheriff of *Middlesex*, greeting. We command you, that you take, *&c.* (as before); and also, that the said *L. K.* may answer the said *L. R.* according to the custom of our court of the bench, in a certain plea of trespass on the case upon promise, to the damage of the said *L. R.* fifty pounds; and have there this writ. Witness, *&c.*

Capias *thereon.*

London. *Capias*, for *T. W.* against *J. M.* late of *London*, gent. and *S. C.* late of *London*, esq; trespass; and also against the said *J.* for 90 *l.* upon promise; and also against the said *S.* for 30 *l.* upon promise.

Præcipe *in case against two defendants.*

Ret'

Lincoln. *Capias* for *J. P.* against *H. B.* late of *Stamford* in your county, grocer, in a plea of trespass and assault. *Ret'*

Præcipe *in assault.*

Upon a dangerous assault and battery that may require bail, an affidavit must be made of

On a dangerous battery bail may be

bail on an affidavit and a judge's order.

of the fact at large, whereupon a judge will make an order for holding the defendant to bail in such sum as on the circumstances of the case he shall think reasonable; and then you sue out a *Præcipe* for a common *Capias*, with an *Acetiam*.

Præcipe in assault with an Acetiam.

London. *Capias* for *W. H.* against *J. B.* late of *London*, *Cabinet-maker*, broke the *Close* at *London*; and also in trespass and assault, to the damage of the said *W.* 200*l*.

Ret'

Bail by order, on Affidavit for 100*l*. *J. W.*

Præcipe in covenant.

Middlesex. *Capias* for *E. L.* against *G. C.* late of *Westminster* in your county, gentleman, otherwise called (as in the indenture) in a plea, that he perform to the said *E.* the covenant made between them, according to the force, form, and effect of a certain indenture made between them.

Ret.'

Præcipe in account as receiver.

Southampton. *Capias* for *T. D.* against *J. W.* late of, &c. that he render to the said *T.* his reasonable account for the time in which he was receiver of the money of the said *T.* &c.

As bailiff.

If as a bailiff, then as before, to —— for the time in which he was bailiff of the said *T.* &c.

If

If as a bailiff and receiver, then —— for the time he was his bailiff in *L.* and receiver of the money of the said *T.* &c.

Bailiff and receiver.

Lincoln. Command *J. P.* late of *C.* in the county aforesaid, gentleman, that he render to *O. R.* 60 *l.* which are in arrear to him for a certain annuity of 36 *l.* which he owes him, and unjustly detains, *&c.*

Præcipe *in annuity.*

If the defendant lives not in the county wherein you intend to try the action, and the cause of action requires bail, you make out a *Præcipe* for a *Testatum capias*, which you carry to the filacer for that county in which you intend to try the cause; as, suppose the defendant lives in the city of *York*, and you would try the cause in *London*, you make out a *Præcipe* in the following form, which you carry to the filacer for *London*.

Where a Testatum capias *necessary.*

London. *Capias* for *H. P.* against *R. J.* late of the city of *York*, bookseller, broke the close at *London*.

Præcipe *for a* Testatum capias.

Returnable on the octave of St. Hilary.

City of *York.* *Testatum capias*, and also for [illegible]*l.* upon promise.

Returnable on the octave of the Purification.

J. R.

Affidavit for [illegible]*l.* 31 *Dec.* 1777.

Teftatum capias.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the fheriffs of the city of *York*, greeting. We command you, that you take *R. J.* late of the city of *York*, bookfeller, if he fhall be found in your bailiwic, and keep him fafely fo that you may have his body before our juftices at *Weftminfter*, on
to anfwer *H. P.* of a plea, wherefore with force and arms he broke the clofe of the faid *H. P.* at *London*, and did other injuries to him, to the great damage of the faid *H.* and againft our peace: And alfo, that the faid *R.* anfwer the faid *H.* according to the cuftom of our court of the bench, in a certain plea of trefpafs upon the cafe on promife, to the damage of the faid *H.* of two hundred pounds. And whereupon our fheriffs of *London* returned to our juftices at *Weftminfter*, at a certain day now paft, that the faid *R.* was not found in their bailiwic, whereas it is teftified in our faid court, that the faid *R.* doth lie hid, and run from place to place in your county; and have there this writ. Witnefs, *&c.*

Ac etiam.

If the defendant lives in any liberty which the fheriff cannot enter, you may get the filacer to make out a *Non omittas*, whereupon the fheriff may enter.

The

The form of a Non omittas.

A Non omittas capias.

GEORGE the third, by the grace of God, king of *Great Britain*, *France*, and *Ireland*, defender of the faith, *&c.* To the sheriff of *L*——, greeting. We command you, that you do not omit by reason of any liberty of the liberty of the rape of *D.* in your county, but that you take *S. C.* late of, *&c.* if he shall be found in your bailiwic, and that you keep him safely, so that you may have his body before our justices at *Westminster*, on to answer *W. N.* of a plea, wherefore with force and arms he broke the close of the said *W.* at *G.* and did other injuries to him, to the great damage of the said *W.* and against our peace. And also that the said *S.* may answer the said *W.* according to the custom of our court of the bench, in a certain plea of debt upon demand for thirty pounds. And whereupon you returned to our justices at *Westminster* at a certain day, now past, that the bailiff of the aforesaid liberty, whom you commanded, by virtue of our said writ to you thereupon directed, to take the said *S.* gave you no answer thereto; and have there, *&c.*

Ac etiam.

Where the defendant cannot be arrested on the first writ, a Capias *by continuance is to be made out.*

If the defendant cannot be taken on the first writ, or served with a copy of it, as the case shall be, and you don't propose to outlaw him, you sue out a *Capias* by continuance, the *Præcipe* for which is the same as before, only this difference, instead of

saying, "*Capias* for *T. D.* you say, *Capias* "by continuance for *T. D.*" But the writ is exactly the same as the first, without the distinction of *Alias* or *Pluries*.

Cap. by cont.	2	10
Duty	2	0
Seal	0	7
	5	5

As the filacer makes out all these writs, I think it needless to trouble the reader with any more precedents of them.

The day of signing the writ to be set down on the writ.

Every officer or clerk of this court, who shall sign any writ or process before judgment, to arrest any person thereupon, shall, before the signing thereof, set down, upon such writ or process, the day and year of his signing the same, which shall be entered on the remembrance upon the forfeiture of 10 *l*. *Stat.* 5, 6 *W.* & *M.* c. 21. §. 3. and 9, 10 *W.* 3. c. 25. §. 42. *Stat.* 9 *Geo.* 2. c. 35. §. 32. *Pract. Reg. C. P.* 440, 441. *Barnes* 420.

Sum sworn to, to be indorsed on the writ.

Where the plaintiff's cause of action shall amount to the sum of 10 *l*. or upwards, and affidavit be thereof made, the sum specified in such affidavit shall be indorsed on the back of the writ or process, for which sum, so indorsed, the sheriff or other officer to whom such writ or process shall be directed shall take bail, and for no more. 12 *Geo.* c. 29. 5 *Geo.* 2. c. 27. 21 *Geo.* 2. c. 3.

The name of the attorney to be subscribed on every writ for arresting the body, execution, warrant, &c.

Every writ for arresting the body, writ of execution, and every warrant that shall be made out on any such writ or execution, shall, before the service thereof, be subscribed or indorsed with the name of the attorney, in a common legible hand, by whom such writ, execution or warrant, shall be subscribed, and if such attorney shall not be

the attorney immediately retained by the plaintiff, then alſo with the name of the attorney ſo immediately retained. *Stat.* 2 *Geo.* 2. *c.* 23. §. 22.

And on every copy of any writ to be ſerved on the defendant.

Every copy of any writ or proceſs, that ſhall be ſerved on any defendant, ſhall before the ſervice thereof be in like manner ſubſcribed or indorſed with the name of the attorney, who ſhall be immediately retained by the plaintiff in ſuch writ or proceſs. *Same ſtat.* *Vide antea fo.* 76.

But the act doth not make the proceſs void for want thereof.

In caſe the attorney's name be not put to the writ, the act of parliament doth not make the proceſs void; and tho' the attorney may be puniſhed for not putting his name to it, the party ought not to ſuffer. *Barnes* 410, 414. *Rich. Pract. Reg.* 441. but ſee *Barnes* 415, which ſeems *contra.*

The not ſubſcribing the attorney's name on a warrant doth not vitiate the writ.

The not ſubſcribing or indorſing the name of the attorney on any warrant that ſhall be made out upon any writ, proceſs or execution, ſhall not vitiate the ſame; but ſuch writ, proceſs and execution, and all proceedings thereon, ſhall be as valid and effectual, notwithſtanding ſuch omiſſion, as if the act of 2 *Geo.* 2. had not been made; *Provided* the writ whereon ſuch warrant is made out be regularly ſubſcribed or indorſed according to the ſaid act. *Stat.* 12 *Geo.* 2. *c.* 13. §. 4.

Cap. ad reſp. teſted in *Trinity*, and returnable in *Hilary* term following, miſſing *Michaelmas* term, is void; and plaintiff is liable to an action of treſpaſs and falſe impriſonment, for he cannot juſtify under a void or irregular proceſs. 2 *Wilſ.* 341.

Of

Of common appearances.

Appearance to be entered with filacer.

COMMON appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 *s.* if one defendant, *viz.* 1 *s.* for the king's duty, and 1 *s.* for entering the appearance, and 4 *d.* for every defendant more than one.

Defendant to appear in eight days.

Where a defendant is served with a copy of a process, he must cause a common appearance to be entered on the return, or within eight days after such return. *Stat.* 5 *Geo.* 2. *c.* 27.

Or plaintiff may on affidavit of service appear for him and proceed.

And in case the defendant shall not appear within eight days after the return of such writ or process, the plaintiff, upon making and filing an affidavit of the personal service of such writ or process, may enter a common appearance for the defendant, and proceed thereon, as if such defendant had entered the same. *Stat.* 12 *Geo.* 1. *c.* 29.

In the Common Pleas,
John Doe,
against
Richard Roe, late of *Petersfield*, in the county of *Southampton*, sadler.

The form of the affidavit.

J. S. of, *&c.* gentleman, maketh oath, that he, this deponent, did, on the day of at *Petersfield* in the said county of *Southampton*, personally serve the defendant *John Doe* with the writ or process hereunto

hereunto annexed, by ſhewing him the ſaid annexed writ or proceſs, and at the ſame time delivering to him a true copy thereof, on which copy was an *Engliſh* notice in writing of the intent and meaning of ſuch ſervice, as by the ſtatute in that caſe made is required.

Sworn, &c. *J. S.*

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commiſſioner authoriſed to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat.* 12 *Geo.* 1. *c.* 29. 5 *Geo.* 2. *c.* 27. 21 *Geo.* 2. *c.* 3. vide antea. *fol.* 78. the rule of *Paſ.* 13 *Geo.* 2.

Before whom the affidavit is to be made.

An appearance entered by plaintiff for the defendant, according to the ſtatute, by a *wrong* name, *amended after declaration.* 3 *Wilſ. Rep.* 49.

The defendant has eight days to enter his appearance, excluſive of the return day, *e. g.* if the writ be returnable on the octave of St. *Hilary*, which is the 20th day of *January*, the plaintiff cannot enter an appearance for the defendant, according to the ſtatute, until the 29th day of *January*.

The eight days to appear excluſive of the return day.

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant muſt complain of this irregularity before judgment is ſigned. *Co. Caſ.* 31, 69, 70, 92, 105, 115, 145. *Rich. Pract. Reg.* 32, 127, 242, 355. *Barnes* 242, 255, 296.

Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.

An

An appearance cures all errors and defects in process. *Barnes* 163, 167, 424, 451. 3 *Wilf.* 141. *S. P.*

Of bail.

In London *or* Middlesex *4 days to put in bail.*
In any other city or county eight days.

IN *London* and *Middlesex* the defendant has four days, exclusive of the appearance day of the return of the writ, to put in bail; and in any other city or county he has eight days exclusive of the appearance day. *Hil.* 9 *Ann.*

If in town, to put in bail before a judge at his chambers.

If the bail be to be put-in in town, the filacer, or other officer who issued out the writ, is to attend, with the attorney and bail, on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in a proper form, if there be occasion to sue the bail.

To be entered with the proper filacer.

But care must be taken to apply to the proper filacer or officer, in whose office the bail ought to be entered, for if the bail be entered in a wrong office, the plaintiff may proceed on the bail bond, and the defendant, before he shall be admitted to plead, shall pay full costs to the plaintiff. *Trin.* 1 *W.* & *M.*

How on a Teftatum capias.

And in case of a *Teftatum capias*, bail must be entered, and filed with the filacer of that county wherein the action was first laid, and not with the filacer of that county wherein the defendant was arrested; for otherwise the bail-bond may be assigned; and it is not to be

presumed or expected, that the plaintiff's attorney will search with a wrong filacer.

In case the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly stampt, *viz.* with a double twelve-penny stampt.

And in such case you make the entry in this manner

The form of a recognizance of bail taken before a judge.

London. Capias, *against* T. M. *late of* London, *Carpenter, at the suit of* W. D. *for* 100*l. upon* [illegible]*, returnable on the morrow of the Holy* Trinity.

Affidavit for 50*l.*

Bail, W. S. *of* Pall Mall *in the parish of Saint* James *in the liberty of* Westminster *and county of* Middlesex, *esq;*
C. S. *of the same place apothecary.*

The defendant bound in 100*l.*
Each of the bail in 50*l.*

Taken and acknowledged the day of &c. before

J. S. Attorney for the defendant.

If

If the defendant be not present, and does not enter into the recognizance, then the bail are bound in double the sum the cause of action is sworn to amount unto.

When bail is put in, you give notice thereof in writing to the plaintiff's attorney, as follows:

W. D. plaintiff
against
T. M. defendant.

S I R,

Notice of bail put in.

Take notice, that *W. S.* of [*naming the street and parish particularly as in the bail-piece or filacer's book*] esq; and *C. S.* of, *&c.* apothecary, were this day put in as bail for the defendant in this cause.

Your humble servant,
J. R.
Attorney for the def.
10 June 1777.

To Mr. S. T. *attorney for the plaintiff.*

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

If the plaintiff doth not mark the exception on the bail-piece, or in the filacer's book, the bail will become absolute in 20 days, notwithstanding he has given notice of exception within the 20 days.

The bail, if excepted to, must justify in four days, or other bail must be added, who can

can justify within that time, *vide postea*, fol. *Rule Trin.* 3 & 4 *Geo.* 2.

Bail excepted to, and not justifying, are as no bail, and cannot render the defendant in their discharge. 3 *Wilf. Rep.* 59.

The defendant's attorney must give notice of adding or justifying, or both, as the case shall be, &c.

W. D. plaintiff
against
T. M. defendant.

S I R,

This day

R. H. of, &c. in the county of *Middlesex*, victualler, was added to the bail already put in for the defendant in this cause; and, on *Saturday* morning next, the said *R. H.* and also *C. S.* one of the bail before put in for the said defendant in this cause, will justify themselves as bail in court.

Notice of bail added, and of justifying.

Your humble servant,
J. S.
attorney for the def.
11 June 1778.

To Mr. S. T. *attorney for the plaintiff.*

He must make an affidavit of the service of the notice, and get a serjeant to move for leave to justify in our court.

Common Pleas.

W. D. plaintiff
against
T. M. defendant
A. S.

Affidavit of the service of the notice.

A. S. clerk to Mr. *J. S.* attorney for the defendant in this cause, maketh oath, that he, this deponent, did on *Wednesday* last, being the eleventh day of *June* instant, serve Mr. *S. T.* the attorney for the plaintiff in this cause, with the notice hereunto annexed, by delivering a true copy of the said notice to the said Mr. *T.*

Sworn, &c. *A. S.*

The expence out of pocket is generally as follows:

Putting in bail before a judge.

	l.	s.	d.			
Duty	0	2	0			
Filacer in some counties	0	6	0			
Judge's clerk, in term 5 s. in vacation	0	12	0			
				1	0	6

Adding,

	l.	s.	d.			
Filacer	0	5	4			
Judge's clerk	0	2	0			
				0	7	4

Justifying in court,

	l.	s.	d.			
Affidavit of notice	0	2	0			
Serjeant's fee	0	10	6			
Filacer	0	5	4			
Secondary	0	1	0			
Cryers	0	2	6			
				1	1	4
				2	8	8

1. The

The judges of this court, or any two of them, whereof the chief justice to be one, may by commissions under the seal of the court, from time to time, impower such persons, other than attornies or solicitors, as they shall think fit, in any of the counties of *England*, to take such recognizances of bail as any person shall be willing to make before them, in any action or suit depending in this court, in manner and form as the judges of the court have used to take the same; which recognizance shall be transmitted to one of the judges, who upon affidavit made of the due taking thereof shall receive the same, upon payment of the usual fees: Which recognizance shall be of the like effect as if taken *de bene esse* before any judge of the court. *Stat. 4 W. & M. c. 4. Vide antea fo. 34.*

Judges may appoint commissioners to take bail.

The recognizance to be transmitted to one of the judges.

For taking this recognizance the commissioner is to take 2 *s.* and no more.

Fee for taking recognizance 2 s

The judges of assize may take recognizances of bail, which shall be transmitted and received as aforesaid, without oath. *Same stat.*

Judges of assize may take the recognizance of bail.

The bail may justify themselves by affidavit before the commissioner, unless they live in *London* or *Westminster*, or within ten miles thereof.

Where bail may justify by affidavit.

Bail put in before a judge must justify in person, and cannot justify by affidavit.

Bail put in before a judge must justify in person.

Upon this act for taking bail by commissioners in the country the court has made several rules, *viz.*

Of putting in bail before a commissioner.

Before any bail ſhall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, ſhall be brought to the commiſſioners, and on the ſaid copy the recognizance or bail-piece ſhall be ingroſſed in this or the like form, as the caſe ſhall be.

The recognizance.

Bail; *John Denn* of *Blackbarnſley* in the pariſh of *Settle* in the county of *York*, gentleman, and *Richard Fenn* of the ſame place, gentleman.

The party himſelf in 20*l.*
Each of the bail in 10*l.*

Taken and acknowledged on the day of in the year of our Lord conditionally (or *de bene eſſe*) before me *A. B.* one of the commiſſioners.

The condition of the recognizance.

Condition.

You *(naming the defendant, if preſent)* do acknowledge to owe unto the plaintiff 20*l.* You *(naming the bail)* do ſeverally acknowledge to owe unto the plaintiff the ſum of 10*l.* a-piece, to be levied upon your ſeveral goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the ſaid action, he ſhall pay the condemnation money, or render himſelf a priſoner to the *Fleet* for the ſame; and if he fail ſo to do, you *(naming the bail)* do undertake to do it for him.

Affidavit to be made of the taking ſuch bail.

Affidavit of the due taking ſuch bail ſhall be made before ſome judge of this court to whom

whom the bail shall be transmitted, or before some person having power to take affidavits in causes depending in this court. *Pas. 5 W. & M.*

All bails taken by any commissioner within the distance of 40 miles from the cities of *London* and *Westminster*, shall be transmitted to the lord chief justice, or one of the judges of the court, within ten days after the taking thereof; and all bails taken by any commissioner above the distance of 40 miles from the said cities of *London* and *Westminster*, shall be transmitted within twenty days after the taking thereof, unless the justices shall be on the circuits, and then as soon as one of them shall return to *London* out of his circuit. *Same rule.*

Bail taken by a commissioner within 40 miles of London, *to be transmitted in* 10 *days; above* 40 *miles in* 20 *days; unless, &c.*

And after such transmission shall be forthwith filed with the proper officer to be entered upon record, otherwise shall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no such bail had been put in; and the defendant, in case he be admissable to plead to the original action, shall not be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail-bond, and plead as of the time when the bail should have been duly entered. *Hil. 6 Geo. 1.*

And filed with the proper officer, or plaintiff to proceed on the bail-bond.

And defendant not to be admitted to plead to original action, but on payment of costs, &c.

Bails taken before commissioners and transmitted to and allowed by a judge, shall be delivered to the clerk of the judge, who shall allow the said bail, which clerk shall take the fees due to the proper officer for the

On bail transmitted, judge's clerk to take the fees for the entry.

the entry thereof, and forthwith deliver the same to be filed. *Mich.* 13 *Geo.* 1.

No bails to be received or filed, unless transmitted within the times aforesaid.

All bails taken before commissioners in the country shall be transmitted and filed with the proper officer, according to the rule *Hil.* 5 *Geo.* 1. And no such bail shall be received or filed, unless transmitted within the respective times appointed by the said rule, without leave of the court. *Mich.* 6. *Geo.* 2.

If not filed in time, application to the court; no leave in the treasury.

If the bail be not filed within the times above directed, application must be made to the court; the judges in the treasury will not give leave to file it, the rule saying it shall not be filed without leave of the court.

Notice of such bail to be given within 4 days.

Every defendant's attorney shall give notice to the plaintiff's attorney of the taking such bail within four days after the caption thereof. *Mich.* 13 *Geo.* 1.

Name of defendant and his bail to be entred in commissioner's book.

Every commissioner is to have a book for entring the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom such bail shall be transmitted.

Where plaintiff's attorney to search.

The plaintiff's attorney may repair to such book for the names of the bail, to the end he may inquire of the sufficiency of them; and if they are found insufficient,

Exception to be within twenty days after bail transmitted, and notice.

may except against them within twenty days after the said bail is transmitted, and notice to the plaintiff or his attorney of taking thereof; and in that case the defendant must

And then better bail, or bail to justify.

either put in better bail, or the cognisors of such bail must justify themselves in open

court,

court, by affidavit made before the commissioner that took the said bail, or by oath made in court, or before one of the judges. *Pas. 5 W. & M.*

If special bail be excepted to, the defendant shall perfect his bail within four days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond. *Trin. 3 & 4 Geo. 2.*

Bail excepted to, to be perfected within 4 days.

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail must justify themselves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of justifying, as aforesaid, he may proceed on the bail-bond.

Additional bail are to justify, tho' not excepted to.

If the plaintiff except to bail in the vacation, and will not be satisfied with justification before a judge, the bail must justify within the first four days of the next term at least. It has been held, that a justification before a judge was no justification but by the plaintiff's consent. That by the general rule of this court, requiring bail to be perfected within four days after exception, must be meant the next four days in term. The fair way is to give notice of a justification in court within four days after exception, but is not requisite. See *Barnes* 111, 112, 115.

Bail excepted to in the vacation to justify within the first four days of the next term.

Notice to justify must be given two days before the day of justification; and a *Sunday* shall not be reckoned as one of the two days;

What notice to be given of justifying.

notice on the *Saturday* to justify on the *Monday* is sufficient.

Bail cannot justify themselves in court, unless they became bail before notice of their justification was given. *Mich.* 18 *Geo.* III.

No attorney to be bail. No attorney of this or any other court, or any person practising as such, shall be bail in any suit or action depending in this court. *Mich.* [illegible] *Geo.* 2.

No sheriff's officer. No sheriff's officer, bailiff, or other person concerned in the execution of process, shall be permitted or suffered to become bail in any action or suit depending in this court. *Same term.* It has been held that this rule extends to marshal-court officers, and all officers executing the process of this and all other courts. *Barnes* 110.

Of assigning the bail bond. In case the defendant does not put in bail by the time limited by the course of the court, the plaintiff may take an assignment of the sheriff's bail-bond, if he approves of the sufficiency of the obligors.

Sheriff on request to assign bail-bond to plaintiff. The sheriff, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail-bond by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereon. *Stat.* 4 & 5 *Ann. c.* 16. §. 20.

Who may bring an action in his own name. And if the bail-bond be forfeited, the plaintiff may after such assignment bring an action

action thereupon in his own name, and the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail on the said bond, as shall be agreeable to justice and reason, and such rule of court shall have the effect of a defeasance to such bail-bond. *Same stat.* [illegible]

The assignee of a bail-bond m[illegible] action thereupon, in the same court in which the original action was commenced, for that court only hath jurisdiction and can take cognizance of the action. 3 *Wilf.* 348. *Barnes* 117.

Proceedings on bail-bond not stayed, where plaintiff has been delayed. *Barnes* 112. Stayed *without* costs, defendant having surrendered before put in suit. *Barnes* 117.

Bail-bond not void, penalty thereof exceeding double the sum due. *Barnes* 159.

When bail-bond may be put in suit.

No bail-bond taken in *London* or *Middlesex* shall be put in suit till four days exclusive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county shall be put in suit till after eight days exclusive of the appearance-day of the return of the process, and all proceedings to the contrary thereof shall be set aside with costs. *H.* 9. *Ann.*

If the writ, for example, in a country cause be returnable on the morrow of *All Souls*, defendant has to 14 *Nov.* to put in bail; and the bail-bond cannot be put in suit, till 15 *Nov.* See *Barnes* 77, 78.

Rule for sheriff to return the writ.

If the plaintiff does not approve of the bail taken by the sheriff, he may give the sheriff a rule to return the writ, and on his returning a *Cepi corpus* he may give him a like rule to bring in the (a) body, and in default thereof may have an attachment against him.

And like to bring in the body.

Sheriff not returning a writ within six days after rule, to pay costs.

If any [illegible] sheriff, under-sheriff, or his deputy, or any other officer having the return of any process issuing out of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within six days after service of a rule of this court for that purpose, such sheriff, under-sheriff, &c. shall be liable to pay the costs occasioned by such neglect. *Hil.* 8 *Geo.* 1.

An action lies against him for a false return.

And if the sheriff returns, that the defendant *Non est inventus* in his bailiwic, when he had really arrested him, an action may be brought against him for a false return.

If the same bail be put in above as given to the sheriff, the plaintiff may except.

Formerly, If the bail taken by the sheriff was put in above, the plaintiff could not except against such bail; but the same stood good and absolute: But now,

In all cases wherein bail-bonds shall be taken, and the same bail shall be put in above, the plaintiff may except against such bail. *Mich.* 6 *Geo.* 2.

(a) Where a sheriff takes a bail-bond, by a rule to bring in the body is meant perfecting bail above; court never expects sheriff to bring defendant's body into court, by virtue of the common rule. *Barnes* 400.

And

And unlefs the bail fo excep[illegible] againft, fhall juftify themfelves, or other bail be added, who fhall juftify themfelves within the time limited by the rules of the court, the plaintiff may take an affignment of the bail-bond, and proceed thereon, not[illegible]ing he excepted to the fame perfons [illegible] as bail above. *Barnes* [illegible], 74. [illegible]

And proceed on the bail-bond, notwithftanding, if they don't juftify.

Declarations in actions on bail-bonds amended as well as any other. *Barnes* 26, 114.

Of ftaying proceedings on bail-bond.

Where proceedings on a bail-bond are ftaid upon confent that it fhall ftand as a fecurity for the plaintiff, if he recovers in the original action, it is always intended and fhould be fo expreffed, that judgment be given upon the bail-bond, and that only execution thereon fhall be ftaid; and without fuch confent, the court will not fo ftay proceeding upon the bail-bond, where the plaintiff has been delayed of a trial. But if fuch delay is through his own neglect, it is otherwife. Where the defendant dies before judgment could be obtained againft him in the original action, the court will ftay proceedings on the bail-bond; but if the defendant lives fo long after the arreft, that if he had put in bail in time the plaintiff could have obtained judgment and execution againft him, the court will not ftay proceedings on the bail-bond. In like manner, if the defendant becomes a bankrupt and obtains his certificate, the court will ftay proceedings on the bail-bond.

One bail eſteemed as no bail.

Two perſons at leaſt muſt become bail for the defendant; the putting in one bail only is eſteemed as no bail, not even ſufficient to ground a ſurrender upon, tho' it be done immediately; and the plaintiff in ſuch caſe may proceed on the bail-bond notwithſtanding any ſuch ſurrender; for the defendant cannot ſurrender until the bail is complete. *Barnes* 60, 61, 67, 105. *Pract. Reg. C. P.* 84, 85. *Plowd.* 69. *Cr. El.* 672. *pl.* 31.

Whether defendant can ſurrender till bail is complete.

But where a defendant, after having obtained a judge's order for time to put in and perfect bail, put in bail and ſurrendered himſelf to the *Fleet* in diſcharge of his bail, without previouſly perfecting his bail by a juſtification; the court held it to be regular. Before a ſurrender defendant is delivered to his bail, and ſuppoſed to be in their cuſtody; by the ſurrender the cuſtody is altered, and the defendant is in priſon; the worth and ſubſtance of the bail, who by the ſurrender are diſcharged, is totally immaterial. *Barnes* 111, 117. but 5 *Wilſ. Rep.* 59. which ſeems *contra.*

Debt on recognizance of bail, writ to be ſerved four days before return

What time to ſurrender thereon.

If an action of debt be brought on a recognizance of bail, the writ muſt be ſerved four days before the return; and the bail may ſurrender the principal on the *Quarto die poſt* of the return *ſedente curia*, but not after the court is riſen. *Rep. & Caſ. Pract. C. P.* 18.

No action on recognizance of bail, pend-

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let the

the plaintiff proceed to judgment, and on stay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cause, the court will stay proceedings in such cause without the bail giving judgment, for by such judgment the bail would be barred from surrendering the principal. *Pract. Reg. C. B.* 83.

ing a writ of error in the original cause.

If the plaintiff proceeds by *Scire facias* against the bail, in case of one *Scire facias* returned *Scire feci*, the bail may surrender the principal on the appearance day of the return of the *Scire facias*; and in case of two *Scire facias's* with *Nihils* return'd, the surrender must be on the appearance-day of the return of the last *Scire facias*, *sedente curia*. See *Barnes* 75, 76.

When bail may surrender on Sci. fa.

If the defendant dies after a *Ca. sa.* returned, though before either a *Sci. fa.* or an action of debt be brought, the bail are bound and not relievable; for after the *Ca. sa.* returned, the recognizance is forfeited by law, and all further time allowed for surrendering the principal, as is above mentioned, is merely *ex gratia*, and where there is a possibility of surrendring the principal, which by his death is become impossible. See *Barnes* 107.

Bail bound by death of defendant if Ca. sa. *returned.*

A *Capias ad satisfaciendum* against the principal in order to charge the bail, should be left with the sheriff four days before the return. *Barnes* 64.

Ca. sa. *in order to charge the bail should lie in the sheriff's office four days,*

Such *Capias ad satisfaciendum* should have fifteen days between the *Teste* and return; *Barnes*

and have fifteen days be-

tween Teste and return. Barnes 76. See *Rep. and Caf. of Pract. C. P.* 214. *Pract. Reg. C. P.* 377. *Vide antea* N°. 79.

Plaintiff shall loose his bail in case he declares differently from his writ. 2 *Wilf.* 93 3 *Wil.* 61. See id. 141.

Bail answerable pending a writ of error. A *Capias ad satisfaciendum* returnable at a time when a writ of error is depending, is not a sufficient foundation to proceed against the bail. *Barnes* 83.

Bail can't be witness for the defendant. One who is bail cannot be a witness in the cause for his principal; therefore if the defendant should have occasion to examine one of his bail has a witness at the trial, he must make an affidavit that such bail is a material witness for him in the cause, and thereupon move the court that such bail may be struck out of the bail-piece, on adding and justifying another in his stead. See *Barnes* 69.

Bail jointly and severally for 140l. verdict for 300l. each shall pay 140l. In an action of assault and battery the plaintiffs procured a judge's order to hold the defendant to bail for 140*l.* whereupon the defendant became bound in 280*l.* and the bail jointly and severally in 140*l.* The plaintiffs had a verdict for 300*l.* and brought separate actions on the recognizance against the bail. The bail moved the court that on payment of one sum of 140*l.* and costs, proceedings might be stayed, and compared this to an action on a bond; but the plaintiffs insisted, that there is a difference, for in a bond the condition is to pay the money; and if one obligor pays it, the other shall be discharged, for the condition is complied with; but in a recognizance the con-

dition is not ſatisfied till the damages recovered be paid, or the defendant ſurrendered. And it was held, that the bail being jointly and ſeverally bound, the actions againſt them could not be diſcharged unleſs the condition of the recognizance was performed, *viz.* that the defendant ſhould pay what was recovered, or ſurrender himſelf to the *Fleet.* *Calvera* & *Ux.* v. *Pinbero*, *Mich.* 12 *G.* 2. *Pract. Reg. C. P.* 88. *Barnes* 76, 77.

Of Declarations.

THE next thing the plaintiff's attorney has to do, is to prepare his declaration:

And note, That if the Action be in

Summonitus and *attachiatus.*

Debt,	*Account*,
Detinue,	*Annuity*, or
Covenant,	*Replevin*,

It muſt be ſaid in the Declaration, the defendant was ſummoned to anſwer, &c.

If the action be in

Caſe	*Trover*, or
Treſpaſs,	*Ejectment*,

Then the declaration is, that the defendant was attached to anſwer, &c.

On a Clauſu fregit *may de clare in any*

On a common *Clauſum fregit*, the plaintiff may declare in any county, or for any cauſe of

county, or for any action.

of action, for that process is only to bring the party into court. *Pract. Reg. C. P.* 136, 137. *Rep. and Caf. of Pract. C. P.* 75.

The like on a Claufum fregit, *with an* Acetiam.

On a *Claufum fregit* with an *Acetiam* in debt, case, or any other action, the plaintiff may declare in any county, or for any cause of action whatsoever, but then he will lose his bail. *Rep. and Caf. of Pract. C. P.* 58. *Pract. Reg. C. P.* 137.

Plaintiff shall loose his bail, when he declares differently from his writ, as for instance, if he sues out a writ in his own right, and declares as executor, the court will vacate and discharge the bail, and order plaintiff to accept of a common appearance. 3 *Wilf.* 61.

On a Præcipe quod reddat *must declare in debt, except it be by the by.*

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, and in that case he must first deliver a declaration in the original action. *Id. ib.*

The like on an attachment of privilege.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in case, or for any cause of action but debt, unless the declaration be delivered by the by, and in that case the plaintiff must first declare in debt, for an attachment of privilege is in the nature of a special original.

On declaration by baron and feme, the husband can't declare by the by at his own suit.

If an action be brought by baron and feme, and a declaration be delivered, in that action, the husband cannot thereupon deliver a declaration by the by at his own suit.

Declaration by the by when to be delivered.

A declaration by the by cannot be regularly delivered after the term in which the writ was returnable.

When

When you have drawn the declaration, for your aſſiſtance, wherein you may have recourſe to the following precedents, you ingroſs a copy of it on treble penny ſtamped paper, and deliver it to the defendant's attorney, who muſt pay you for the ſame at the rate of 4 *d.* *per* ſheet, (reckoning ſeventy-two words to a ſheet) beſides the king's duty; and eight-pence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the ſecondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1 *s.* 10 *d.* *viz.* 1 *s.* 6 *d.* for the king's duty, and 4 *d.* to the ſecondary for the rule.

Of delivering the declaration.

Notice to plead given to defendant, after delivery of declaration without ſuch notice, was held good, though not given at time of delivery of declaration, or endorſed thereon. 2 *Wilſ.* 137.

Where the defendant's attorney, after a diligent inquiry could not be found, it hath been held ſufficient to leave the declaration in the office, and to give notice thereof to the defendant himſelf. *Pract. Reg. C. P.* 126. Where neither the defendant nor his attorney can be found, the court on application will order notice, *&c.* in the office to be good, unleſs the bail, if any, ſhew cauſe to the contrary. *Barnes* 308.

Of delivering declaration where defendant's attorney cannot be found.

Before the plaintiff's attorney can ſign judgment, he muſt by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance for

Plea to be demanded in writing.

for the defendant. Notice in the office, *Mich. Geo.* 2.

Plaintiff has till the end of the second term, to deliver his declaration.

Upon process returnable the first, or any other return of a term, the plaintiff has time to the end of the next ensuing term to deliver his declaration to the defendant's attorney, or leave the same in the office; and the defendant's attorney (having entered his appearance) may, at the end of the ensuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's attorney, may at any time in the vacation of such ensuing term, after the rule for declaring is out, sign his *Non pros.* for want of a declaration, and not afterwards; and the plaintiff shall not, without leave of the court, have any longer time to declare than as aforesaid, other than the time limited by the defendant's rule. *Hil.* 9 *Annæ.*

Defendant after second term may give a rule to declare.

Declaration to be demanded in writing.

And for want thereof Non pros. *to be signed.*

Declaration to be demanded of the agent, and not of the country attorney.

On a rule given to declare, a declaration was demanded of the attorney in the country, by his own agreement, but the *Non pros.* signed for want of a declaration was held to be irregular, for the declaration should have been demanded of the agent in town. *Pract. Reg. C. P.* 124. *Barnes* 311.

Where no rule, the plaintiff has till the essoin-day of the 3d term to declare.

Where the defendant at the end of the second term does not give a rule for the plaintiff to declare, the plaintiff has till the essoin-day of the third term to deliver or file his declaration. *Rep. and Cases of Pract. C. P.* 12. *Pract. Reg. C. P.* 121.

After

After *Superſedeas* ordered for want of plaintiff's proceeding to judgment within *three* terms after declaration, and before defendant could be diſcharged, ſame plaintiff cauſed him to be charged with a new declaration, which court held regular, being for a different cauſe of action. *Barnes* 503.

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected. *Pract. Reg. C. P.* 121.

Plaintiff has two terms to declare after bail complete.

Where a copy of a proceſs is ſerved on any defendant, and an appearance is entered for ſuch defendant by the plaintiff's attorney, purſuant to the late act * for preventing frivolous and vexatious arreſts, the plaintiff's attorney ſhall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *Engliſh* notice written in a ſecretary-hand to ſuch defendant, or by leaving the ſame at his laſt or moſt uſual place of abode, ſignifying the nature of ſuch action, at whoſe ſuit it is proſecuted, and in whoſe office ſuch declaration is left; and from the time of giving ſuch notice ſuch declaration ſhall be deemed well delivered to ſuch defendant. *Mich.* 1 *Geo.* 2.

Where the plaintiff appears for the defendant.

Declaration to be left in the office.

And notice left for def. at his laſt place of abode.

Declaration well delivered from time of notice.

And in caſe ſuch defendant, after ſuch notice given, ſhall not plead by the time the rule for pleading is out, the plaintiff in ſuch caſe may ſign his judgment (a rule to plead being firſt given) without any other or far-

And if def. don't plead may ſign judgment without farther calling for a plea.

* 12 *Geo.* c. 29. perpetuated by 21 *Geo.* 2. c. 3.

ther calling for a plea. *Same rule. See* Tit. *Inquiry.*

Where the plaintiff appears for the def. he may proceed without taking notice of any attorney the def. may have employed.

Where the defendant fails to enter his appearance, and the plaintiff enters it for him, he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea. *Rep. and Cas. of Pract. C. P.* 50, 116. *Barnes* 249, 250.

When the def. shall plead in four days.

When decl. may be delivered de bene esse.

On all process returnable the first, second or third return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days *after* such declaration delivered, with notice to plead accordingly; without any imparlance. *Mich.* 3 *Geo.* 2. *Trin.* 8 *Geo.* 3.

When the def. has eight days time to plead.

And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days *after* the declaration delivered with notice to plead, without imparlance; and in default of pleading as afore-

The four or eight days to plead are inclusive, and the notice may be given accordingly.

Though by the word *after* in the above rules they seem to exclude the day of the delivery of the declaration, the construction of them must be governed by the rule to plead, which is inclusive of the day on which it is given. And therefore if a declaration be left in the office *de bene esse* on the first day of a term, notice thereof may be given on the same day to plead within the first four days of the term, (or first eight days of the term, if the defendant has eight days to plead) and not say within the first four (or eight) days after the declaration delivered.

said,

ſaid, the plaintiff may ſign his judgment, and all ſuch declarations may be delivered *de bene eſſe. Same rules.*

And all declarations in *London* and *Middleſex* delivered purſuant to the above rule, on proceſs returnable the firſt or ſecond return of any term, where the defendant lives within twenty miles of *London*, ſhall be delivered, with *notice* to plead to ſuch action within four days *after* ſuch declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives about twenty miles from *London*, ſhall be delivered with *notice* to plead within eight days *after* ſuch declaration delivered. *Paſch.* 3 *Geo.* 2.

Such declarations to be delivered with notice when to plead.

The plaintiff may deliver a declaration *de bene eſſe*, before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

Decl. may be delivered de bene eſſe *before time for bail or appearance expired.*

It ſeems a doubt, whether notice of a declaration being filed is neceſſary, where bail is put in. See 3 *Wilſ.* 147.

Held that delivering a declaration, after the time for putting in bail is expired, as a declaration *de bene eſſe*, is no waiver of the exception to bail; but demanding a plea thereupon is a waiver of the exception; it is admitting the defendant to be in court, and in a condition to plead. *Trin.* 16 & 17 *Geo.* 2. *C. B. Liſter* v. *Wainhouſe. Barnes* 92.

Whether declaration de bene eſſe, *and proceeding thereon, will be waiver of exception to bail.*

In an action which requires only a common appearance, if a declaration be delivered *de bene eſſe*, the plaintiff can't ſign judgment for want of a plea, till the time the defen-

On declaration de bene eſſe *judgment can't be ſigned till appearance entered.*

defendant had to enter his appearance is expired; as suppose the *capias* is returnable *Octab. Hilar.* and a declaration is left in the office *de bene esse* on the 23d of *January*, and notice and a rule to plead is given the same day, the rule will be out on the 26th, but as the defendant has eight days to appear, exclusive of the return-day, the plaintiff can't sign judgment for want of a plea, till the 29th of *January*, and then an appearance must be first entered, either by the defendant or the plaintiff for him.

Indorsement on declaration de bene esse.

Where a declaration is left in the office *de bene* * *esse*, there should be an indorsement on it, signifying that it is left conditionally, or *de bene esse*. *Barnes* 257.

Decl. to be delivered four days exclusive before the end of the term.

To have a plea the same term, the declaration should be delivered four days (exclusive of the day of the delivery) before the end of the term.

All declarations and pleadings must be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mich.* 9 *Geo.* 2.

Decl. delivered to def. his attorney being known, is bad.

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration.

* But on the court's looking into the general rules of *Mich.* 3 *Geo.* 2. and *East.* 3 *Geo.* 2 they held that it was not necessary to indorse notice to plead on the declaration where it is filed *de bene esse*, and notice thereof given to defendant. *Barnes* 303.

If

If the attorney be not known, the declaration may be left in the office, and notice given to the defendant. *Barnes* 308. See *Id.* 335.

Must be delivered to the agent, and not to the country attorney. Barnes 306.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the case shall be) must be given to the agent, and not the country attorney, but where the declaration has been accepted in the country, and *Oyer* of the bond demanded and given there, and a plea demanded there, the court has refused to set aside the judgment for want of a plea, the defendant having agreed to this method of proceeding by accepting the declaration, *&c.* in the country.)

Declaration is only well delivered from the time of notice.

The declaration is only well delivered from the time of notice, and therefore if notice of the declaration be given after the rule to plead is given, it is irregular. *Pract. Reg. C. P.* 131. *Rep. & Cas. Pract. C. P.* 111. *Barnes* 304.

Notice to plead in four days when it should be eight, irregular.

If such defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not signed till the eight are expired. *Barnes* 302, 303. *Pract. Reg. C. P.* 135.

Two declarations, one against husband and wife, and the other against wife only, cannot be consolidated. 2 *Wils.* 227.

Notice need not [illegible] the [illegible] declaration.

On a motion to set aside judgment, for that the notice of the declaration mentioned, that the declaration was for goods sold and delivered, and materials found, whereas there was a count in the declaration for money

lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff shall give notice of the nature of the action, the notice was held to be good; and it was said, "that it is not necessary to set forth the whole declaration. *Turner*, administrator, v. *Bourns*, *Pasch.* 2 *Geo.* 2. *Pract. Reg. C. P.* 132.

And it was held, that it is only necessary to set forth the nature of the action, as in debt or in case, without mentioning for what, for that will appear by the declaration itself. *Skin* against *Gwinel*, *Pasch.* 5 *Geo.* 2. *Pract. Reg. C. P.* 133. *Barnes* 299 *S. P.*

But where the notice was, a declaration *in an action of trespass on the case* without further description, it was held insufficient; the intent of the rule being that the defendant should know what he was sued for. Actions in the case for contracts, and for torts are widely different: on several undertakings and promises, or at least on promise should have been added. *Hil.* 29 *Geo.* 2. *Taylor* against *Oxley*, *Barnes* 498. 2 *Wils.* 84.

Irregularity in delivering declaration to be complained of two days before executing inquiry.

If there be any irregularity in the delivery or notice of the declaration, the defendant must apply to the court two days before the day appointed for executing the writ of inquiry. *Pract. Reg C. P.* 127.

Declaration under peculiar circumstances amended on payment of costs, and terms put on defendant, tho' leave to withdraw declaration, and declare *de novo* refused. *Barnes* 25, 26.

Prece-

Precedents of Declarations.

In the Common Pleas.

(a) Eaſter *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* P. *F.* late of *Weſtminſter* in the ſaid county of *Middleſex*, doctor of phyſic, *(b)* otherwiſe called *P. F. de paroch. ſancti Martini in Prat. Weſtmonaſterii, Medicinæ Doctor*, was ſummoned to anſwer *J. H.* of a plea, that he render to him ſeventy pounds which he oweth to him, and unjuſtly detaineth, and ſo forth. And wherefore the ſaid *J.* by *A. B.* his attorney ſaith, that whereas the ſaid *P.* on the nineteenth day of *April* which was in the year of our Lord one thouſand ſeven hundred and fifty-eight, at *Weſtminſter* aforeſaid in the county of *Middleſex* aforeſaid, by his certain writing obligatory acknowledged himſelf to be bound to the ſaid *J.* in the aforeſaid ſum of ſeventy pounds, to be paid to the ſaid *J.* when he the ſaid *P.* ſhould be thereunto required, Nevertheleſs the ſaid *P.* although often required, hath not paid the ſaid ſeventy pounds to the

On a bond.

(*a*) Title of declaration made agreeable to truth of fact. 2 *Wilſ.* 256.

(*b*) As to the *Alias dict.* *Vide antea fo.* 80.

ſaid *J.* but hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to him; wherefore the ſaid *J.* ſaith that he is injured, and hath damage to the value of twenty pounds; and thereof he bringeth ſuit, and ſo forth. And he bringeth here into court the aforeſaid writing, which teſtifieth the ſaid debt in form aforeſaid, the date whereof is the day and year above-mentioned, and ſo forth.

In the Common Pleas.

Michaelmas *Term in the ſeventeenth year of king* George *the third.*

On a Mutuatus.

London, *to wit*, *W.* *S.* late of *London*, &c. was ſummoned to anſwer *R. F.* gent. of a plea, that he render to him 50*l.* which he oweth him, and unjuſtly detaineth, *&c.* And whereupon the ſaid *R. F.* by *L. R.* his attorney, ſaith, that whereas the ſaid *W. S.* on the   day of   , in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at *London* aforeſaid in the pariſh of St. *Mary le Bow* in the ward of *Cheap*, borrowed of the ſaid *R. F.* the ſaid 50*l.* to be paid to the ſaid *R. F.* when he the ſaid *W. S.* ſhould be thereunto required; yet the ſaid *W. S.* although often required, hath not yet paid the ſaid 50*l.* to the ſaid *R. F.* but hath hitherto intirely refuſed, and ſtill doth refuſe, to pay him the ſame; wherefore the ſaid *R. F.* ſaith, that he is injured, and has

has damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

You ſeldom declare in debt for money borrowed, but where judgment for a debt without Bond is confeſſed by virtue of a warrant of attorney, but declare in caſe on an *Indebitatus aſſumpſit.*

In the Common Pleas.

Hilary *Term in the* ſeventeenth *year of the reign of King* George *the third.*

Middleſex, *to wit.* *T. T.* late of *Weſtminſter* in the county of *Middleſex*, dealer in coals, was attached to anſwer *T. D.* in a plea of treſpaſs on the caſe: And whereupon the ſaid *T. D.* by *L. R.* his attorney complaineth, that whereas the ſaid *T. T.* on the firſt day of *January* in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *T. D.* in the ſum of 100*l.* lawful money of *Great Britain*, for the like ſum of money before that time lent by the ſaid *T. D.* to the ſaid *T. T.* at his ſpecial inſtance and requeſt, and being ſo indebted, he the ſaid *T. T.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed

Indebitatus aſſumpſit *for money lent.*

mised the said *T. D.* that he the said *T. T.* would well and truly pay the said 100*l.* to the said *T. D.* when he the said *T. T.* should be thereunto afterwards requested: *Nevertheless* the said *T. T.* not at all regarding his said promise and undertaking so made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T. D.* in this behalf hath not paid the said sum of money, or any part thereof, to the said *T. D.* (although to pay the same to the said *T. D.* he the said *T. T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, was requested by the said *T. D.*) but the said *T. T.* hath hitherto intirely refused, and still doth refuse, to pay the same, to the said *T. D.* to the damage of the said *T. D.* of 120*l.* And thereof he bringeth suit, &c.

Breach.

As before, to——For that whereas the said *O. B.* on the day of in the year of his present majesty's reign at the parish of in the county of *Middlesex*, was indebted to the said *S. A.* in 30*l.* lawful money of *Great Britain*, for so much money by the said *O. B.* before that time had and received to the use of the said *S. A.* and being so indebted, he the said *O. B.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then and there

Indebitatus assumpsit *for money had and received to the plaintiff's use.*

there faithfully promised the said *S. A.* that he the said *O. B.* would well and truly pay the said 30 *l.* to the said *S. A.* when he the said *O. B.* should be thereunto afterwards requested: *Nevertheless*, &c. *as before.*

As before, to——For that whereas the said *T. M.* on the day of in the year of his present majesty's reign, at the parish of in the county of was indebted to the said *C. M.* in 20 *l.* lawful money of *Great Britain*, for so much money by the said *C.* for the use of the said *T.* and at his special instance and request before that time paid, laid out and expended, and being so indebted, he the said *T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then there faithfully promised the said *C.* that he the said *T.* would well and truly pay the said 20 *l.* to the said *C.* when he the said *T.* should be thereunto afterwards requested: *Nevertheless*, &c.

Indebitatus assumpsit *for money laid out.*

In the Common Pleas.

Easter *Term in the seventeenth year of king* George *the third.*

London, *to wit.* *T. M.* late of *London*, merchant, was attached to answer *J. S.* in a plea of trespass on the case: And whereupon the said *J. S.* by *M. C.* his attorney complaineth,

On an inland bill of exchange by the drawee against the acceptor. Lilly's Ent. 44, 55, 90.

plaineth, that whereas the said *T. M.* on the 17th day of *May* in the year of our Lord 1763, at *London* in the parish of St. *Mary Le Bow* in the ward of *Cheap* (he being then a person trading, merchandizing, and using commerce at *London* aforesaid) according to the usage and custom of merchants from the time to the contrary whereof the memory of man is not, made his certain first bill of exchange in writing subscribed with his own hand, bearing date the same day and year aforesaid, and directed the said bill of exchange to one *J. H.* (the said *J. H.* then being a person trading, merchandizing, and using commerce to foreign parts, namely, at) by which said bill of exchange the said *T. M.* required the said *J. H.* twenty-one days after sight thereof, to pay his said first bill of exchange to the said *J. S.* (by the name of *J. S.* merchant at *London*) or order, 112*l.* 5*s.* value of him, with or without advice from the said *T. M.* which said bill of exchange afterwards, that is to say, on the 15th day of *May* in the year of our Lord aforesaid, at aforesaid, was shewn to the said *J. H.* for his acceptance thereof, and the said *J. H.* did not accept the said bill, but then and there refused to accept the same, of which the said *T. M.* afterwards, that is to say, on the fifteenth day of *June* in the year of our Lord last mentioned, at *London* aforesaid in the parish and ward aforesaid, had notice, and by reason of the premisses, and also according to the usage and custom of merchants, he the said *T. M.* was and became liable to

Bill not accepted.

pay

pay unto the ſaid *J. S.* the ſaid ſum of 112 *l.* 5 *s.* in the ſaid bill of exchange mentioned; and being ſo liable, he the ſaid *T. M.* afterwards, that is to ſay, on the ſame day and year laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, undertook, and to the ſaid *J. S.* then and there faithfully promiſed, that he the ſaid *T. M.* would well and faithfully pay and ſatisfy to the ſaid *J. S.* the ſaid 112 *l.* 5 *s.* in the ſaid bill of exchange mentioned: *Nevertheleſs*, &c.

It is uſual and neceſſary to lay diverſe counts in one declaration, where the plaintiff hath various demands againſt the defendant, as on a promiſſory note, for goods ſold, money lent, *&c.* And even where he hath but one demand; as, ſuppoſe for goods ſold and delivered, it will be proper to lay two counts, as an *Indebitatus aſſumpſit*, and a *Quantum valebant*, whereupon if he fails of proving the price agreed on, he may prevail on the *Quantum valebant* upon proving the delivery of the goods, and the value of them at that time; and as to the promiſe in ſuch caſes there is no occaſion to prove it; the law implies it upon proof of the debt.

[illegible] the Common Pleas.

Hilary *Term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, to wit. R. G. late of the pariſh of St. *Andrew, Holbourn*, in the county of *Middleſex*, druggiſt, was attached

On a promiſſory Note.

( )

to anſwer *S. N.* of a plea of treſpaſs on the caſe: And whereupon the ſaid *S. N.* by *L. R.* his attorney complaineth, that whereas the ſaid *R. G.* on the tenth day of *December* in the ſeventh year of his preſent majeſty's reign, at *Weſtminſter* in the county of *Middleſex*. made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year, by which ſaid note the ſaid *R. G.* promiſed to pay to the ſaid *S. N.* or his order, *ten days after* the date of the ſaid note, the ſum of fifty pounds, *for value received by* him the ſaid *R. G.* By reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *R. G.* became liable to pay to the ſaid *S. N.* the ſaid ſum of 50 *l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note; and being ſo liable, he the ſaid *R. G.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay to the ſaid *S. N.* the ſaid 50 *l.* in the ſaid note mentioned, according to the tenor and effect of the ſaid note. *And whereas alſo* the ſaid *R. G.* afterwards, that is to ſay, on the firſt of *January* in the year aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was indebted to the ſaid *S. N.* in 100 *l.* of lawful money of *Great Britain*, for diverſe goods, wares and merchandizes, by the

Indebitatus aſſumpſit *for goods ſold and delivered.*

the said (c) *S. N.* before that time sold and delivered to the said *R. G.* at his special instance and request; and being so indebted, he the said *R. G.* in consideration thereof, afterwards, that is to say, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 100 *l.* to the said *S. N.* when he the said *R. G.* should be thereunto requested. *And whereas also* afterwards, that is to say, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, in consideration that the said *S. N.* had before that time sold and delivered to the said *R. G.* at his like special instance and request, diverse other goods, wares and merchandizes, he the said *R. G.* undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would, when he should be thereunto requested, well and truly pay to the said *S. N.* so much money as the goods, wares and merchandizes last above mentioned were at the time of the sale and delivery thereof reasonably worth. And the said *S. N.* in fact

Quantum valebant thereon.

(c) After verdict where the defendant's name is put in the declaration, instead of the plaintiff's name, as for instance, "*by the said* R. G. before that time sold and delivered to the said *R. G.* instead of the said *S. N.*" the court will reject the defendant's name, as being surplusage. 3 *Wils. Rep.* 43. *Com. Rep.* 557. *S. P.* See *Skin* 591. *Sid.* 135. *Stat.* 16 & 17 *Car.* II. *chap.* 8.

saith,

ſaith, that the goods, wares and merchandizes laſt above mentioned were, at the time of the ſale and delivery thereof, reaſonably worth other 100 *l.* of like lawful money of *Great Britain*, that is to ſay, at *Weſtminſter* aforeſaid in the county aforeſaid, whereof the ſaid *R. G.* afterwards, that is to ſay, on the ſame day and year laſt above mentioned, there had notice. *And whereas alſo* the ſaid *R. G.* afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, accounted together with the ſaid *S. N.* concerning diverſe other ſums of money before that time due, and unpaid by the ſaid *R. G.* to the ſaid *S. N.* and the ſaid *R. G.* was upon the ſaid account then and there found in arrear to the ſaid *S. N.* in 76 *l.* 12 *s.* 6 *d.* of like lawful money of *Great Britain*; and the ſaid *R. G.* being ſo found in arrear, in conſideration thereof afterwards, that is to ſay, on the day and year laſt above mentioned, at *Weſtminſter* aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *S. N.* that he the ſaid *R. G.* would well and truly pay the ſaid 76 *l.* 12 *s.* 6 *d.* to the ſaid *S. N.* when he the ſaid *R. G.* ſhould be thereunto requeſted: *Nevertheleſs* the ſaid *R. G.* not at all regarding his ſaid ſeveral promiſes and undertakings ſo made aforeſaid in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *S. N.* in this behalf, hath not paid to the ſaid *S. N.* the ſaid ſeveral ſums of money, or any

Inſimul computaſſet.

Breach.

of them, or any part thereof, (although to pay the same to the said *S. N.* he the said *R. G.* afterwards, that is to say, on the same day and year last above mentioned at *Westminster* aforesaid in the county aforesaid, was requested by the said *S. N.*) but the said *R. G.* hath hitherto intirely refused, and still doth refuse to pay the same to the said *S. N.* to the damage of the said *S. N.* of 200 *l.* and thereof he bringeth suit, *&c.*

It is said, that in an *Insimul computasset* the plaintiff must in his declaration lay the very day of the account, and the sum agreed upon by both parties to be due.

In the Common Pleas.

Hilary *Term in the seventeenth year of the reign of king* George *the third.*

Middlesex, *to wit.* L. K. late of *Westminster* in the county of *Middlesex*, widow, was attached to answer *J. B.* esq; of a plea of trespass upon the case, *&c.* and whereupon the said *J.* by *S. H.* his attorney complaineth, that *whereas* the said *L.* on the first day of *January* in the year of our Lord one thousand seven hundred and fifty-seven, at *Westminster* aforesaid, was indebted to the said *J.* in the sum of eight pounds and fifteen shillings of lawful money of *Great Britain*, for the use, occupation and enjoyment of one

Indebitatus assumpsit *for the use and occupation of a house.*

 messuage,

meſſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, by the ſaid *L.* by the permiſſion of the ſaid *J.* and by, from and under the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had and enjoyed, and being ſo indebted, ſhe the ſaid *L.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him the ſaid ſum of money, when ſhe the ſaid *L.* ſhould be thereunto afterwards required: *And whereas alſo* the ſaid *L.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *L.* had permitted and ſuffered the ſaid *L.* to have, occupy, poſſeſs and enjoy a certain other meſſuage, with the appurtenances, of the ſaid *J.* ſituate, ſtanding and being in *Weſtminſter* aforeſaid, for a long ſpace of time then paſt, that is to ſay, for the ſpace of one quarter of a year then paſt, undertook, and to the ſaid *J.* then and there faithfully promiſed to pay to him ſo much money as he had reaſonably deſerved to have from the ſaid *L.* for the ſame; and the ſaid *J.* in fact ſaith, that he had reaſonably deſerved to have from the ſaid *L.* for the ſame, another ſum of eight pounds and fifteen ſhillings of like lawful money, that is to ſay, at *Weſtminſter aforeſaid*, whereof

Quantum meruit thereon.

of the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid had notice: *And whereas also* the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid, was indebted to the said *J.* in the further sum of ten pounds of like lawful money, for the like sum of money by the said *J.* before that time, at the special instance and request of the said *L.* and to the use of the said *L.* paid, laid out and expended; and being so indebted, she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *J.* that she would well and truly content and pay him the said ten pounds last mentioned, when afterwards she the said *L.* should be thereto required: *Nevertheless* the said *L.* not regarding her said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, although to pay the same to him the said *J.* she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, was requested by the said *J.* but the said *L.* to pay the same to him, hath hitherto refused, and doth yet refuse, to the damage of the said *J.* of ten pounds; And thereof he bringeth suit, &c.

Indebitatus assumpsit *for money laid out.*

Breach.

In the Common Pleas.

Easter *Term in the seventeenth year of the reign of king* George *the third.*

Indeb. ass. for work done and materials found.

London, W. H. late of *London*, woollen-draper, was attached to answer *J. B.* of a plea of trespass on the case; and whereupon the said *J. B.* by *J. W.* his attorney complaineth, that whereas the said *W. H.* on the twenty-first day of *February* in the seventh year of his present majesty's reign, at *London* in the parish of St. *Mary Le Bow* in the ward of *Cheap*, was indebted to the said *J. B.* in 30 *l.* of lawful money of *Great Britain*, as well for work before that time done and performed by the said *J. B.* for the said *W. H.* at his special instance and request, as for divers materials and necessary things used in and about the said work before that time found and provided by the said *J. B.* at the like special instance and request of the said *W. H.* And the said *W. H.* being so indebted, in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *J. B.* that he the said *W. H.* would well and truly pay the said 30 *l.* to the said *J. B.* when he the said *W. H.* should be thereunto required:

Quantum meruit thereon.

And whereas also afterwards, that is to say, on the same day and year aforesaid, at *London*

don in the parish and ward aforesaid, in consideration that the said *J. B.* had before that time done and performed other work for the said *W. H.* at his like special instance and request, and had found and provided, at the like special instance and request of the said *W. H.* diverse other materials and necessary things used in and about the said last mentioned work, he the said *W. H.* undertook, and then, and there faithfully promised the said *J. B.* that he the said *W. H.* would, when he should be thereunto required, well and truly pay to the said *J. B.* so much money as he therefore reasonably deserved to have: And the said *J. B.* in fact saith, that he did therefore reasonably deserve to have of the said *W. H.* other 50*l.* of like lawful money of *Great Britain*, that is to say, at *London* aforesaid in the parish and ward aforesaid, whereof the said *W. H.* afterwards, that is to say, on the same day and year aforesaid, there had notice: *Nevertheless*, &c.

In the Common Pleas.

Hilary *Term in the sixteenth year of the reign of king* George *the third.*

Southampton, *to wit.* *J.* *S.* late of *Croudall* in the said county of *Southampton*, yeoman, was attached to answer *R. D.* in a plea of trespass on the case, and whereupon

For not repairing fences.

upon the ſaid *R. D.* by *J. L.* his attorney complaineth, That whereas the ſaid *R. D.* on the firſt day of *October* in the ſixth year of his preſent majeſty's reign, was ſeiſed, and is ſtill ſeiſed in his demeſne as of fee, of and in one cloſe called the kitchen-garden, ſituate, lying and being in *Croudall* aforeſaid in the ſaid county of *Southampton*, to which ſaid cloſe called the kitchen-garden, another cloſe in the poſſeſſion, tenure or occupation of the ſaid *J. S.* called the hop-garden, at *Croudall* aforeſaid in the ſaid county of *Southampton*, lieth next and contiguous adjoineth, between which ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe in the tenure or occupation of the ſaid *J. S.* called the hop-garden, there is now, and time out of mind hath been, certain pales or fences, which part and divide the ſaid cloſes the one from the other. *And whereas* the ſaid *J. S.* and all occupiers and poſſeſſors of the ſaid cloſe called the hop-garden, for the time being, time out of mind were uſed and accuſtomed and ought to make, repair and amend the ſaid pales, and fences between the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, and the ſaid cloſe of the ſaid *J. S.* called the hop-garden, with all neceſſary reparations and amendments, as often as need ſhould be or require, leſt any cattle out of the ſaid cloſe called the hop-garden into the ſaid cloſe called the kitchen-garden ſhould eſcape and enter, and do damage there: *Nevertheleſs* the ſaid *J. S.* not ignorant of the premiſſes, but contriving and fraudulently intending the ſaid *R. D.* in this

this behalf unjuſtly to damnify, and to deprive him of the whole benefit, profit and advantage of the ſaid cloſe called the kitchen-garden, afterwards, *to wit*, on the ſaid firſt day of *October* in the ſaid ſixth year of his preſent majeſty's reign, and from thence to the firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, the pales and fences ſeparating and dividing the ſaid cloſe called the kitchen-garden, and the ſaid cloſe called the hop-garden the one from the other as aforeſaid, permitted to remain and continue ruinous, broken, and in decay for want of repairing the ſame; by means whereof the cattle, hogs and ſheep of the ſaid *J. S.* and of diverſe other perſons to the ſaid *R. D.* unknown, on the ſaid firſt day of *October*, and on ſeveral days and times between the ſaid firſt day of *October* and the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent majeſty's reign, out of the ſaid cloſe of the ſaid *J. S.* called the hop-garden, into the ſaid cloſe of the ſaid *R. D.* called the kitchen-garden, broke and entered, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen ſhillings, eat, trod down, and conſumed; by means whereof the ſaid *R. D.* the whole benefit, profit and advantage of his ſaid cloſe called the kitchen-garden, for all that time, *to wit*, from the ſaid firſt day of *October* in the ſaid ſixth year of his ſaid preſent majeſty's reign to the ſaid firſt day of *January* in the ſaid ſixth year of his ſaid preſent ma-

 jeſty's

jesty's reign, wholly lost and was deprived of; whereupon the said *R. D.* saith, that he is wronged, and hath damage to the value of nine pounds and nineteen shillings; And therefore he bringeth suit, *&c.*

Trespass. Breaking plaintiff's close, &c. Andrews's Rep. 21, 284.

Southampton, *T. W.* late of *Christ-Church* in the county of *Southampton*, gentleman, was attached to answer *J. P.* of a plea, wherefore with force and arms he broke the close of the said *J. P.* at *L.* in the county aforesaid, and his grass and herbs, to the value of 20 *l.* there lately growing, with certain cattle grazed, trampled on and consumed, and did him other injuries, to the great damage of the said *J. P.* and against the peace of our lord the present king; and whereupon the said *J. P.* by *J. G.* his attorney complaineth, that the said *T. W.* on the first day of *June* in the sixth year of his present majesty's reign, with force and arms, *&c.* broke the close of the said *J. P.* at *L.* in the county aforesaid, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, to the value of 10 *l.* there then lately growing, with certain cattle, that is to say, with horses, oxen, cows, hogs and sheep, grazed, trampled on and consumed, and other injuries, *&c.* to the great damage, *&c.* and against the peace, *&c.* and whereupon the said *J. P.* saith that he is injured, and hath damage to the value of twenty pounds; And thereof he bringeth suit, *&c.*

In

In the Common Pleas.

Michaelmas *Term in the seventeenth year of king* George *the third.*

Middlesex, *to wit.* *J.* *M.* late, of, *&c.* was attached to answer *J. H.* of a plea, wherefore with force and arms he assaulted the said *J. H.* at *Westminster* in the county of *Middlesex*, and beat, wounded and ill-treated him, so that his life was despaired of, and other injuries did to him, to the great damage of the said *J. H.* and against the peace of our lord the present king, *&c.* And whereupon the said *J. H.* by *J. C.* his attorney, complaineth, that the said *J. M.* on the day of in the year of his present majesty's reign, with force of arms, that is to say, with swords, staves and knives, assaulted the said *J. H.* at *Westminster* in the county of *Middlesex*, and beat, wounded, and treated him ill, so that his life was despaired of; and other injuries, *&c.* to the great damage, *&c.* and against the peace, *&c.* wherefore the said *J. H.* saith, that he is injured, and hath damage to the value of 50*l.* And thereof he bringeth suit, *&c.*

Assault.

Surrey, *to wit.* *J.* *T.* late of, *&c.* brewer, was attached to answer *W. B.* of a plea of trespass on the case; and whereupon the said *W. B.* by *L. R.* his attorney complaineth, that whereas the said *W. B.* on the tenth day

Trover.

day of *December* in the ſeventh year of his preſent majeſty's reign, at *Kingſton* in the county of *Surry*, was poſſeſſed of the following goods and chattels, that is to ſay [*here inſert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being ſo thereof poſſeſſed the ſaid *W. B.* caſually loſt the ſaid goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, *to wit*, on the ſaid tenth day of *December* in the ſeventh year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, came by finding to the hands and poſſeſſion of the ſaid *J. T. Nevertheleſs* the ſaid *J. T.* knowing the ſaid goods and chattels to be the goods and chattels of the ſaid *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. B.* of the ſaid goods and chattels, hath not delivered the ſaid goods and chattels to the ſaid *W. B.* (altho' often required) but afterwards, that is to ſay, on the tenth day of *January* in the ſeventh year aforeſaid, at *Kingſton* aforeſaid in the county aforeſaid, converted the ſaid goods and chattels to his own proper uſe, to the damage of the ſaid *W. B.* of 200*l.* And thereof he bringeth ſuit, *&c.*

A count cannot be added to a declaration after the ſecond term of the delivery or filing thereof in the office. *Barnes* 500.

See

See further precedents among the pleadings at the end of the book, *&c.*

Money, &c. brought into court.

THE intent and consequence of bringing money into court, will appear by the following rule.

In the Common Pleas.

Michaelmas *Term in the seventeenth year of king* George *the third.*

Rule for paying money into court.

S. Against *R. Wednesday* the 28th of *November.* It is ordered, That the defendant ſhall pay to the plaintiff, or to his attorney, ten pounds, together with coſts to be taxed by Mr. prothonotary *Cooke*, if the plaintiff will accept thereof, and that thereupon all further proceedings in this action ſhall be ſtayed; but if the plaintiff will not accept thereof, the defendant ſhall immediately bring the ſaid ten pounds into this court, and plead the general iſſue; and if upon the trial of the iſſue between the ſaid parties the plaintiff ſhall become nonſuit, or the jury ſhall not aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then the plaintiff ſhall have no coſts, but ſhall pay to the defendant, or to his attorney, coſts to be taxed by the ſaid prothonotary; which coſts ſhall

ſhall be paid out of the money ſo brought into court, if ſufficient for that purpoſe, and the reſidue, if any, ſhall be paid to the plaintiff. But if the money ſo paid into court be not ſufficient to pay the ſaid coſts, the deficiency ſhall be made good by the plaintiff. But if upon the trial of the ſaid iſſue the jury ſhall aſſeſs damages to the plaintiff exceeding the ſaid ten pounds, then judgment ſhall be entered for the plaintiff upon the verdict with coſts, and the plaintiff ſhall have the ſaid ten pounds out of court towards ſatisfaction of ſuch judgment, and may take out execution for the reſidue.

Entered on the motion of ſerjeant *Agar* for the defendant. *By the court.*

Money not to be brought into court where the plaintiff is an executor or adminiſtrator.

Where the plaintiff is an executor or adminiſtrator, money may not be brought into court; See *Barnes* 280, 286. *Pract. R. C.* p. 250. but as the reaſon given is, that an executor or adminiſtrator is not by law to pay coſts. And *Barnes* 287, and *Pract. Reg. C. P.* 249. All ſeem *contra*. Therefore *quære*, Whether money may not be brought into court, if the action brought by the executor or adminiſtrator be ſuch an action as he might have brought in his own right, and in which he need not have named himſelf executor or adminiſtrator; for in ſuch an action he will be liable to pay coſts on a nonſuit, or the like.

In

In debt for rent money may be brought into court. *Barnes* 280. *Pract. Reg. C. P.* 257.

May in debt for rent.

In replevin and avowry for rent the plaintiff was allowed to bring money into court.

In replevin.

In covenant, in which the breach was assigned in a sum certain, *viz.* 11*l.* for not dressing corn, leave was given to bring in the 11*l.* upon the common rule. *Hil.* 15 *Geo.* 2. *C. B. Walnouth* v. *Houghton*, *Barnes* 284.

In covenant, for a sum certain.

In debt on a bond, conditioned for good behaviour and paying money, motion for leave to bring in the money and plead performance to the rest of the condition denied. *Hil.* 18 *Geo.* 2. *C. B. Atkins* v. *Taylor*, *Barnes* 285.

In debt on a bond denied.

In debt for the penalty of a charter-party, motion to bring in the money denied. *Pas.* 19 *Geo.* 2. *C. B. Yeoman* v. *Ross.* *Id. ib.*

And in debt on a charter-party.

In debt on a bond conditioned for the performance of covenants in a lease, and breach assigned for non-payment of 10*l.* for half a year's rent, the like motion denied. *Hil.* 22. *Geo.* 2. *C. B. Wright* v. *Benington*, *Barnes* 286.

And in debt on a bond for performance of covenants, and breach in a sum certain.

In trover, goods not being ponderous have been allowed to be brought into court; this is discretionary in the court, and where they have been ponderous, the plaintiff has been ordered to shew cause why he should not accept them. *Barnes* 281. *Pract. Reg. C. P.* 260. *Rep. and Cas. of Pract. C. P.* 130.

Trover.

The court will not give the defendant liberty to bring money into court on some of the

Defendant shall not bring

money in to part, and demur to the rest of the declaration.

the counts in the declaration, and demur to the rest; for the reason of making the rule for bringing money into court, is to prevent vexation, and make an end of the cause. *Pract. Reg. C. P.* 256.

In an action for mesne profits after recovery in ejectment, defendant shall not pay money into court. 2 *Wils.* 115.

But leave to bring in money as to some counts, and plead several pleas to the rest.

But the court gave leave to bring 5 *l.* 5 *s.* into court upon the common rule, with respect to the 7th and 8th counts, there being 9 counts in the declaration, and as to the rest to plead the general issue, the statute of limitations and a set-off. *Trin.* 21 & 22 *Geo.* 2. *C. B. Hellier* v. *Hallet*, administratrix. *Barnes* 286.——Leave to plead bankruptcy to the count, and to bring in money on the common rule, and plead the general issue to the other counts. *Paf.* 16 *Geo.* 2. *C. B. Hall* v. *Lane*, *Barnes* 350.

To bring in money, and plead plene administravit, *and the general issue to the whole.*

Leave granted to bring money in on the common rule, and plead *plene administravit*, and the general issue to the whole. *Hil.* 23 *Geo.* 2. *C. B. Austin* v. *Ross*, executor. *Barnes* 287.

When money may be brought into court.

It has been said the defendant may be admitted to bring money into court after the rule to plead is out, but not after he has pleaded, without the plaintiff's consent. *Barnes* 281. But *Hil.* 29 *Geo.* 2. between *Phillips* and *Barker*, leave was given to withdraw the general issue, to bring 42 *s.* into court and plead the same again on taking notice of trial for sitting after term, no delay having been occasioned by the defendant's having omitted

omitted to bring the money in before plea pleaded. *Barnes* 289.

If a regular judgment be set aside on payment of costs, pleading an issuable plea, &c. the defendant shall not have leave to bring money into court. *Barnes* 281. *Pract. Reg. C.* 85, 262.

Nor after a regular judgment set aside.

The defendant had brought money into court on the common rule; the plaintiff would not accept the money, but proceeded to trial, and upon the trial was nonsuited; and the defendant moved in the treasury, that in regard the plaintiff was out of court by the nonsuit, he might have the money back, and produced the *Postea*. The judges on consideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could not have the money back again: Afterwards the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it should remain in court on the common rule in the new action. *Lane* v. *Wilkinson, Mich.* 1. *Geo.* 1. *Pract. Reg. C. P.* 250. *Rep. and Cas. of Pract. C. P.* 36.

Tho' plaintiff nonsuited, defendant cannot have the money back.

On a new action leave for plaintiff to have the money, or let it lie on the common rule.

The like resolution, and leave for the defendant to bring in more money on a new action being brought. *Dickenson* v. *Talkvin, Trin.* 3 *Geo.* 2. *Pract. Reg. C. P.* 252. *But see the rule antea.*

The like, and leave to bring in more money on the new action.

Where the plaintiff has refused the money and proceeded, the court has admitted him to take the money out of court on paying the defen-

Plaintiff admitted to take the money, tho'

had refused it, and proceeded. defendant his costs subsequent to the bringing the money into court. *Barnes* 280, 282.

If judgment arrested, money to be paid to plaintiff. The judgment was arrested, and consequently no costs payable on either side; the court ordered 10 *l.* brought into court by the defendant to be paid to the plaintiff. *Pas.* 16 *Geo.* 2. *C. B. Fisher* v. *Kitchingman*, *Barnes* 284.

Plaintiff's attorney paid his bill out of money brought into court. On the common rule 37 *l.* being paid into court, the plaintiff proceeded to trial and recovered a greater sum, and afterwards became a bankrupt, the assignees moved to have the 37 *l.* paid to them; but the plaintiff's attorney insisting, that as he had been the means of obtaining the verdict, he ought to be first paid his bill of costs, it was ordered that his bill should be taxed, and that what was due to him should be paid out of the 37 *l.* and the residue to the assignees. *Trin.* 27, 28 *Geo.* 2. *C. B. Owston* v. *Obrian*, *Barnes* 145.

What sum on a treasury motion. 5 *l.* or under may be brought in on a motion in the treasury.

Rule absolute for leave to withdraw plea of general issue, on payment of costs, pay 2 *l.* 2 *s.* into court, on common rule, and plead the same plea again; the defendant taking notice of trial for the sitting after term in *Middlesex*; the court observed, that no delay had been occasioned to plaintiff, by defendant's omitting to bring money into court, before plea pleaded. *Barnes* 269.

As to laying of actions, and changing the Venue.

ALL real and mixed actions, as waste, *Ejectione firmæ, &c.* are local, and must be laid in the county where the land lies; and actions of trespass *Quare clausum fregit* must be laid in the county where the wrong was done.

Local actions.

Actions of debt, detinue, assault, annuity, account, *&c.* are transitory, and may be laid in any county where the plaintiff pleaseth.

Transitory actions.

But by a rule of this court, actions upon the case, trespass for goods, assault or imprisonment, arising in any *English* county, are to be laid in their proper counties, unless they arise where the justices of *Nisi prius* seldom come. And because trespass or trover for goods, battery, imprisonment and slander must needs be notorious in what county they arise, the attorney knowingly laying them out of their proper county (unless in the cases before expressed, or such other cause as shall be allowed by a judge of the court) shall be severely punished. *Mich.* 1654.

Case, trespass, assault or imprisonment, to be laid in their proper counties, unless, &c.

Attornies laying actions of trespass, &c. in foreign counties, unless, &c. to be severely punished.

In a transitory action, *before the defendant has pleaded*, on motion and affidavit made, (That the plaintiff's cause of action (if any) arose in the county of *A.* and not in the county of *B.* as laid in the declaration, or elsewhere out of the county of *A.*) the court will change the *Venue* to the proper county; and the defendant must plead to the new action

Venue may be changed before plea, on motion and affidavit.

Defendant to plead as before.

Venue may be changed tho' the defendant comes in on the exigent.

as he should have done to the former without delay; and the *Venue* may be changed in this manner though the defendant comes in on the exigent. *Same rule.*

Venue can't be changed before appearance.

The defendant cannot move to change *Venue* in any action, until his appearance be entred. *Pas.* 25 *Car.* 2.

May move to change the Venue at any time before plea.

Any defendant may move to change the *Venue* at any time before plea pleaded, in all such actions where the *Venue* may be changed by the course of this court, notwithstanding such defendant may have applied for and obtained further time to plead before such motion made. *Mich.* 16 *Geo.* 2.

Where a plea shall be no waiver of a rule Nisi *for changing the* Venue.

The defendants having put in their plea, after a rule for shewing cause why the *Venue* should not be changed, and before it was made absolute; the court held, that the putting in the plea by inadvertency was no waiver of the rule, and gave the defendants leave to withdraw their plea on payment of costs, and made the rule for changing the *Venue* absolute. *Trin.* 24 & 25 *Geo.* 2. *C. B. Herbert* v. *Flower et al.* in trover. *Barnes* 360.

Rules *Nisi* for changing the *Venue* from *London* into *Essex* were discharged; the defendant on obtaining a judge's order for time to plead having consented to rejoin *gratis*, and to take notice for trial at the sitting after term in *London*; for though an order for time to plead is generally no reason against changing the *Venue*, yet if the defendant's attorney will consent to take notice of trial in the county where the action is laid, that consent shall bind him; if the judge had known the

the defendant's intention of moving to change the *Venue*, he would have made his order without prejudice to such motion. *Trin.* 28 *Geo.* 2. *Hunter* against *Gray*, and *Smith* against *Gray*, *Barnes* 493.

Action on the case on a custom of the borough of *Leicester*, for exercising the trade of a watch maker there, not being a freeman. The *Venue* was changed from *London* to *Leicestershire*, without the usual affidavits. *Note*; there is a commission of goal delivery every assises for this borough, but no commission of *Nisi prius*. *Trin.* 19 & 20 *Geo.* 2. *C. B.* Mayor, &c. of *Leicester* v. *Green*, *Barnes* 492.

Venue changed on reading a declaration without the usual affidavit.

It it be moved the last day of the term, the court will not make a rule; for the plaintiff has no time to shew cause. *Pract. Reg. C. P.* 4.6, 427.

Not to be moved the last day of term.

But if the declaration be delivered so late, that the plaintiff cannot move before the last day of term, he may move it then. *Barnes* 489.

Unless, &c.

The *Venue* may not be changed from a county at large to a city and county, as from the county of *Middlesex* to the county of the city of *York*. *Barnes* 477.

The Venue *not to be changed from a county to a city.*

But the *Venue* has been changed from a county at large into *London*. *Id. ib.*

Except London.

It may be changed from one city and county to another city and county, as from the city of *Norwich* to the city of *London*. *Pract. Reg. C P.* 429.

But may from one city and county to another.

The court will not change the *Venue* into a county palatine, as from *Middlesex* to *Lancashire*.

Not to be changed into a

county palatine. *shire. Rep. and Caf. of Pract. C. P.* &c. ... 478, 488. *Pract. Reg. C. P.* 428, 429.

Of changing the Venue *into cities and counties where assizes are seldom held, or but once a year.*

The *Venue* cannot be changed into *Hull*, *Canterbury*, &c. becauſe it is not known when an aſſiſe will be held there; nor into the city of *Worceſter* or *Glouceſter*, out of the county at large, becauſe the aſſiſes for the city and the county at large are held at the ſame place. In *Eaſter* or *Trinity* term, the *Venue* may be changed into a city or county where the aſſiſes are held but once a year, as *Briſtol*, *Cumberland*, &c. In *Michaelmas* and *Hilary* term there is no certain rule, but the court ſhould change the *Venue* then, if it can be done without manifeſt inconvenience.

Nor in an action of Scandalum magnatum, *or on a bond or promiſſory note.*

The court will not change the *Venue* in an action of *Scandalum* (*a*) *magnatum*, nor where the plaintiff ſues on a bond, or other ſpecialty, nor on a bill (*b*) of exchange or promiſſory (*c*) note. See *Rep. and Caſ. of Pract. C. P.* 119. *Pract. Reg. C. P.* 317.

But where there is a declaration on a note with other counts, as for goods ſold and delivered, &c. the court will change the *Venue*, unleſs the plaintiff will undertake, at the peril of a nonſuit, to give evidence on the promiſſory note. See *Barnes* 490, 492.

(*a*) *Rep. and Caſ. of Pract. C. P.* 132. *Pract. Reg. C. P.* 417. *Barnes* 482. (*b*) 2 *Barnes* 491. (*c*) *Pract. Reg C P.* 417, 418. *Barnes* 480, 483, 485. *Rep. and Caſ. Pract. C. P.* 152.

If a serjeant (d) at law, or an (e) attorney, be plaintiff, and sues by *Capias*, and not by writ of privilege, the *Venue* may be changed, for he has thereby waived his privilege, and is to be considered only as a common person.

If a serjeant or attorney sues by Capias, *the* Venue *may be changed.*

Action retained in *Middlesex*, on motion to change the *Venue* into *Worcestershire*, in right of plaintiff's privilege, as an attorney, though attachment was not *Test.* out of *Middlesex*. *Barnes* 493.

If an attorney be defendant, his privilege alone is not a sufficient cause to change the *Venue*. *Rep. and Cas. of Pract. C. P.* 135. *Pract. Reg. C. P.* 419. *Barnes* 482.

An attorney defendant not intitled to have the Venue *changed.*

Venue changed from *Middlesex* to *Monmouthshire*. *Barnes* 493.

Pleas.

IF the defendant answers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two sorts, general and special.

Pleas.

A general plea, commonly called the general issue, is a concise direct answer to the declaration.

General.

A special plea contains some particular matter, either by way of excuse, justification, or the like.

Special.

(d) *Rep. and Cas. of Pract. C. P.* 145. *Pract. Reg. C. P.* 420. *Barnes* 346. (e) *Rep. and Cas. of Pract. C. P.* 132. *Pract. Reg. C. P.* 419. *Barnes* 479, 480.

er without

General issues.

Non est factum to a bill on a bond.

And the said *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that that writing is not his deed; and of this he putteth himself upon the country.

Non est factum to a bill or indenture.

The same as before, only, instead of the word *writing*, say *bill.* The like of an indenture, *mutatis mutandis.*

Non est factum testato.is.

10 Co. 120.

And the said *J. P.* by *T. B.* his attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that the said writing is not the deed of the said *W. P.* and of this he putteth himself upon the country.

Nil debet.

And the said *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not owe to the said *H.* the said 100*l.* or any part thereof, in manner and form as the said *H.* hath above declared against him; and of this he putteth himself upon the country.

Nil debet in debt qui tam. Lilly's Entries 223.

And the said *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he the said *H.* doth not owe to our said lord the king, and to the said *J. B.* who as well, &c. the said 400*l.* or any part thereof, in manner and form as the said *J.* who as well, &c. hath

above

above declared against him; and of this he putteth himself upon the country.

And the said *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, &c and saith, that he doth not detain from the said *A. B.* the said thirty pounds nor any part thereof, in manner and form as the said *A. B.* above complaineth against him; and of this he putteth himself upon the country.

Non detinet *in debt.* Brownl. 170. Lilly's Entries 215.

And the said *C.* by *R. P.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he did not undertake in manner and form as the said *G.* above complaineth against him; and of this he putteth himself upon the country.

Non assumpsit.

And the said *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, &c. and say, that the said *J. W.* [*the testator*] in his life-time did not undertake in manner and form as the said *R.* above complaineth against them; and of this they put themselves upon the country.

Non assumpsit *by executors.*

And the said *J. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he is not guilty of the premisses above laid to his charge, as the said *H.* above complaineth against him; and of this he putteth himself upon the country.

Not guilty in case.

And saith, that he is not guilty of the said trespass, as, &c. (*ut supra*).

In trespass.

And saith, that he is not guilty of the said trespass and assault, as, &c.

In assault.

Replication to the general issue. The replication to each of these former without issues is this; and the said *D.* doth so likewise, *i. e.* likewise puts himself upon the country.

Special pleas.

Non assumpsit intra sex annos. And the said *W.* by *J. C.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *E.* ought not to have her said action therefore against him, because he saith, that he did not undertake at any time within six years next before the day of * suing forth the original writ of the said *E.* in manner and form, as the said *E.* above complaineth against him; and this he is ready to verify: Wherefore he prayeth judgment, whether the said *E.* ought to have her said action therefore against him, &c.

Replication. And the said *E.* saith, that she by any thing before alledged ought not to be barred from having her said action against the said *W.* because she saith, that the said *W.* at some time within six years next before the day of suing forth the original writ of the said *E.* undertook in manner and form, as the said *E.* above complaineth against him; and this she prayeth may be inquired of by the country; and the said *W.* doth so likewise, &c.

Rejoinder.

* If at the suit of an attorney say, *suing forth the said writ of privilege.*—If against an attorney say, *exhibiting the said bill.*

And

And the said *S.* by *K. M.* his attorney, cometh and defendeth the force and injury, when, &c. and saith, that the said *V.* ought not to have his said action against him, because he saith the said several causes of action did not accrue, nor did any of them accrue to the said *V.* within six years next before the day of the obtaining the original writ of him the said *V.* and this he is ready to verify: Wherefore he prayeth judgment if the said *V.* ought to have his said action thereof against him the said *S.*

Actio non accrevit infra sex annos.

And the said *V.* saith, that he by any thing above alledged ought not to be barred from having his action aforesaid against him the said *S.* because he saith, that the said several causes of action did accrue to the said *S.* within six years next before the day of obtaining the original writ of him the said *S* to wit, on the aforesaid 12th day of *August* in the year of our Lord 1758, at the parish aforesaid in the county aforesaid; and this he prayeth may be inquired of by the country; and the aforesaid *S.* doth so likewise, &c.

Replication.

Rejoinder.

And the said *T.* by *J. W.* his attorney cometh and defendeth the force and injury, when, &c. and as to the coming with force and arms, and whatever is against the peace of our now lord the king, the said *T.* saith, that he is not guilty thereof; and of this he putteth himself upon the country; and the said *R.* doth so likewise, &c. And as to the residue of the said trespass above supposed to be done, the said *T.* saith, that the said *R.* ought not to have or maintain his said action thereof

Son assault demesne.

thereof against him, because he saith, that the said *R.* at the time in which the said trespass is above supposed to be done at *L.* in the county aforesaid, with force and arms, *&c.* assaulted the said *T.* and then and there would have beaten, wounded, and evilly treated the said *T.* if he the said *T.* had not then and there immediately defended himself against the said *R.* by which the said *T.* then and there defended himself against the said *R.* and so the said *T.* saith, if any damage or hurt then and there happened to the said *R.* it was from the assault of the said *R.* and in defence of the said *T.* and this the said *T.* is ready to verify: Wherefore he prayeth judgment, if the said *R* ought to have or maintain his said action against him, *&c.*

Replication de injuria sua propria. And the said *R.* saith, that he by any thing by the said *T.* above by pleading alledged ought not to be precluded from having his said action against the said *T* for the residue of the trespass, because he saith, that the said *T.* on the day and year above mentioned, at *L.* aforesaid in the county aforesaid, of his proper injury, without the cause by the said *T.* above by pleading alledged, assaulted the said *R.* and beat, wounded, and evilly treated him in manner and form as the said *R.* above complaineth thereof against the said *T.* And this he prayeth may be inquired of by the country; and the said *T.* doth so likewise, *&c.* Therefore as well to try the said issue, as the said other issue above joined between the said parties, the sheriff is commanded, *&c.*

Rejoinder. ***Venire awarded.***

And the said *R. J. G.* and *A.* by *T. F.* their attorney come and defend the force and injury, when, &c. and as to the coming with force and arms, and also the whole trespass aforesaid, except the assault and imprisonment aforesaid, they say they are Not guilty thereof; and of this they put themselves upon the country; and the said *N.* doth so likewise; and as to the rest of the trespass aforesaid above supposed to be done, they the said *R. J. G.* and *A* say, That the said *N.* ought not to have his said action thereupon against them, because they say that before the said time in which that assault and imprisonment is supposed to be done, to wit, in the term of St. *Hilary* in the —— year, &c. one *A. B.* duly sued out of the court of our lord the king, before the king himself, (the said court then being at *Westminster* in the county of *Middlesex*) a certain writ of our said lord the king of *Latitat* against the said *N.* by the name of *F. N.* gent. and against *V. E. J. C.* and *J. C.* in the said writ also named, directed to the then sheriff of the county of *Devon*; by which said writ the said sheriff of the said county of *Devon* was commanded to take the said *N. F. V. E. J. C.* and *J. C.* if they should be found in his bailiwick, and to keep them safely, so that he might have their bodies before our said lord the king at *Westminster*, on *Monday* next after the morrow of the *Ascension* of our Lord then next ensuing, to answer the said *A. B.* in a plea of trespass, and also to a bill of the said *A.* against the said *N.* for 60 *l.* of debt, according

Justification in assault and imprisonment.

Writ sued out of B. R. *against the plaintiff.*

Directed to the sheriff of Devon.

according to the custom of the court of our said lord the king, before the king himself to be exhibited; which said writ afterwards, and before the return thereof, to wit, on the ninth day of *May* in the —— year, &c. the said *A. B.* at *S.* aforesaid delivered to one Sir *E. S.* bart. then sheriff of the said county of *D.* to be executed in due form of law. By virtue of which said writ, the said Sir *E. S.* then sheriff of the county aforesaid afterwards, to wit, on the —— day of —— in the —— year aforesaid, and before the return of the said writ, at *S.* aforesaid made his certain warrant in writing, sealed with the seal of his office, directed to the said *R. J. G.* and *B.* and to one *R. E.* by which said warrant the said then sheriff, on the behalf of our lord the king, commanded the said *R. J. G. B.* and *R.* and each of them, that they should take the said *N. F.* if he should be found in his bailiwick, and that, &c. so that the said sheriff might have his body before our said lord the king at *Westminster*, on the said *Monday* next after the morrow of the *Ascension* of our Lord, to answer the said *A. B.* of the plea and bill aforesaid, which said warrant afterwards, to wit, on the said —— day of —— in the —— year aforesaid, at *S.* aforesaid, was delivered to the said *R. J. G.* and *B.* to be executed according to law; by virtue of which said warrant they the said *R. J. G.* and *B.* afterwards, and before the return of the said writ, to wit, on the —— day of —— in the —— year aforesaid, at *S.* aforesaid, took and arrested the said *N. F.* and then and there had him in their

Writ delivered to the sheriff.

Warrant thereupon to defendants.

By virtue whereof they arrested the plaintiff.

their custody by virtue of the ſaid warrant, and detained the ſaid *N.* as it was lawful for them to do, by the time in the ſaid declaration above ſpecified, which ſaid taking and arreſting the ſaid *N.* in form aforeſaid, and for the cauſe aforeſaid, are the ſame aſſault and impriſonment, whereof the ſaid *N.* above complaineth; without this, that they the ſaid *R. J. G.* and *B.* or either of them, are guilty of any aſſault and impriſonment, otherwiſe, or in any other manner before or after the ſaid—— day of—— in the—— year aforeſaid; and this they are ready to verify: Wherefore they pray judgment if the ſaid *N.* ought to have his action thereupon againſt them, *&c.*

Traverſe.

Sed vide *as to this plea,* 3 Lev. 62, 63.

Infra ætatem.

And the ſaid *T.* by *R. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that at the time of making the ſaid ſeveral promiſes and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *W.* ought to have his ſaid action thereupon againſt him, *&c.*

Replication, for neceſſary apparel ſuitable to defendant's degree.

And the ſaid *W.* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action againſt the ſaid *T.* becauſe he ſaith, that the ſaid 20*l.* expended and laid out by him the ſaid *W.* for the ſaid *T.* and the taylor's work done and performed by him the ſaid *W.* together with the materials and neceſſary things uſed in and about the ſaid work, and in form aforeſaid found and

and provided by the ſaid *W.* for the ſaid *T.* were laid out and expended, done and performed, found and provided by the ſaid *W.* at *London* aforeſaid, in the pariſh and ward aforeſaid, for the neceſſary apparel and cloathing of the body of the ſaid *T.* his degree requiring the ſame; and this he is ready to verify: Whereupon he prayeth judgment, and his ſaid damages by occaſion of the premiſſes, to be adjudged to him, *&c.*

Rejoinder, not for neceſſary apparel, &c.

And the ſaid *T.* ſaith, that the ſaid 20*l.* expended and laid out by the ſaid *W.* and the ſaid taylor's work done and performed by the ſaid *W.* together with the materials and things neceſſary, uſed in and about the ſaid work, and in form aforeſaid found and provided by the ſaid *W.* for the ſaid *T.* were not for the neceſſary apparel and cloathing of the body of the ſaid *T.* in manner and form as the ſaid *W.* has thereupon above by replying alledged; and of this he putteth himſelf upon the country; and the ſaid *W.* doth ſo likewiſe, *&c.*

Dureſs to a bond.

And the ſaid *H. J.* by *S. A.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *S. C.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that he, at the time of making the writing aforeſaid, was impriſoned by the ſaid *S. C.* and others by his contrivance, *to wit,* at *T.* aforeſaid in the county aforeſaid, and was there detained in priſon until he the ſaid *H. J.* by force and dureſs of impriſonment then and there made the

ſaid

said writing to the said *S. C.* wherefore he prayeth judgment if the said *S. C.* ought to have or maintain his said action aforesaid, *&c.*

Mich. 10 *Geo.* 2.

1 Count. *Indeb. ass.* for serving defendant as a hired servant.

2 *Indeb. ass.* for work and labour.

3 *Quantum meruit*, for nursing defendant's daughter.

4 *Insimul computasset.*

Plea of tender of 3s 6d.

Lilly's Ent. 476.
Pract. Reg. 562, 505.
1 Lutw 368.

And the said *John Carter* by *J. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the first promise and assumption in the said declaration mentioned, except as to 3*s.* 6*d.* part of the said sum of 10*l.* therein mentioned; and as to all the other promises and assumptions mentioned in the said declaration, the said *John* saith, that he did not assume upon himself in manner and form as the said *Margaret* above thereof complaineth against him; and of this he putteth himself upon the country; and as to the said 3*s.* 6*d*, part of the said sum of 10*l.* in the said first promise and assumption in the said declaration mentioned; and as to the said first promise and assumption in that behalf, the said *John* saith, that the said *Margaret* ought not to have or recover against him any more damages by reason of the not paying thereof, than the said 3*s.* 6*d.* because he saith, that after the said first promise and assumption above supposed to be made, and before the suing out the original writ of the said *Margaret*, to wit, on the

the first day of *January* in the year of our Lord 1753, at *Westminster* aforesaid, he the said *John* was ready and offered to pay, and tendered to the said *Margaret* the said 3*s*. 6*d*. which the said *Margaret* then and there refused to accept from the said *John*. And the said *John* further saith, that from the time of making the said first promise and assumption hitherto he hath been always ready, and still is ready, to pay the said 3*s*. 6*d*. to the said *Margaret*, and he bringeth the same here into court, ready to be paid to the said *Margaret* if she is willing to receive the same; and this he is ready to verify: Wherefore he prayeth judgment, if the said *Margaret* ought to have or recover against him any more damages than the said 3*s*. 6*d*. &c.

W. Chapple.

The money to be paid into court to the prothonotary when the plea is left, which should be pleaded in four days.

Replication. And as to the said plea of the said *John* as to the first promise (except as to 3*s*. 6*d*. part of the said sum of 10*l*.) and as to all the other promises mentioned in the said declaration, the said *Margaret* saith, that the said *John* did promise and undertake in such manner and form as the said *Margaret* hath above complained against him the said *John*; and of this she likewise putteth herself upon the country; and as to the said 3*s*. 6*d*. part of the said 10*l*. in the said first promise mentioned, and in bar pleaded to be tendered as above

above, she the said *Margaret* saith, that by reason of any thing by the said *John* above in pleading alledged, she ought not to be precluded from having her said damages therefore against him the said *John*, because she saith that he the said *John* did not at any time before the suing out of the said original writ of the said *Margaret*, offer to pay or tender unto the said *Margaret* the said sum of 3*s*. 6*d*. as the said *John* hath above in his pleading alledged; and this she prayeth may be inquired of by the country, *&c*. And the said *John* doth so likewise, *&c*. Therefore, *&c*.

And *Thomas Merriton*, who is impleaded by the name of *Thomas Moreton*, in his proper person cometh and defendeth the force and injury, *&c*. and saith, that he is now, and always was called and known by the surname of *Merriton*, and not *Moreton*, as by the said writ and declaration is above supposed; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed, *&c*.

And *John Smith*, late of the parish of St. *James* within the liberty of *Westminster* in the county aforesaid, yeoman, against whom the said *Ralph Bigland* hath brought his said writ, by the name of *John Smith* late of the parish of St. *James* within the liberty of *Westminster* in the county aforesaid, cheesemonger, in his proper person cometh and defendeth the force and injury, *&c*. and saith, that on the day of suing out the said original writ, and long before, he was, and yet is a yeoman, *and not of any mystery, trade or profession*;

These words are intended to answer that objection.

without this, that the said *John Smith* on the day of suing the said original writ, or at any time before or since, was a cheesemonger; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed. [See more pleas in abatement, *Vol. 2. fo.* 1. to 17]

Plea to be delivered in writing to the plaintiff's attorney.

The defendant is to deliver his plea in writing [on paper stamped with a treble penny stamp] to the plaintiff's attorney. *Mich.* 1654.

When to be left in the office.

And if there be no such attorney to be found, or being found refuseth to accept it, then the plea may be left in the office. *Same rule.*

Rule to plead, and an order for time. Plaintiff need not give a new rule.

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the first day of the next term, the plaintiff may sign judgment in default of the defendant's pleading, without giving a new rule. *Rep. and Cas. of Pract. C. P.* 67, 141.

The like where delayed by an injunction.

Where the plaintiff has given a rule to plead, and has been delayed from signing judgment by an injunction out of *Chancery*, after the injunction is dissolved he may sign judgment without giving a new rule. *Barnes* 238.

Plea can't be delivered in the country.

A plea delivered to the attorney in the country is irregular, it must be delivered to the agent in town or left in the office. *See rule antea.*

Nil debet to assumpsit, Plt. may sign judgment.

If the defendant pleads a false plea, as *Nil debet* to an action on the case upon *assumpsit*, the plaintiff may sign judgment.

A

Tender when to be pleaded.

A plea of tender ought regularly to be pleaded in the ſame manner as a plea in abatement, *viz.* in four days after the declaration delivered, if delivered four days before the end of the term; and if the declaration be delivered before the eſſoin-day of a term, then it muſt be delivered within the four days of that term, as a plea of the laſt term. See *Barnes* 361. But this is to be diſpenſed with upon particular circumſtances, as if the defendant lives at a diſtance in the country, ſo that his attorney cannot deliver this plea in due time, the court will upon ſuch reaſonable cauſe give further time to plead a tender, as of the term in which the declaration was delivered, but ſuch application ſhould be within the four days, or at leaſt as ſoon as poſſible it can be without any delay on the defendant's part. See *Barnes* 351, 352.

No dilatory plea to be received without affidavit.

No dilatory plea ſhall be received unleſs the party offering the ſame do by affidavit prove the truth thereof, or ſhew ſome probable matter to the court to induce them to believe that the fact of ſuch dilatory plea is true. *Stat.* 4 & 5 *Annæ.*

There muſt be an affidavit to verify the fact, in a plea of *antient demeſne.* 3 *Wilſ. Rep.* 51.

Affidavit to plea of infancy.

A plea of *Infra ætatem* ought to have an affidavit annexed, to verify the truth of the plea. *Pract. Reg. C. P.* 5.

Plea in abatement to be pleaded in four days.

A plea in abatement muſt be pleaded within the firſt four days after the declaration is delivered or left in the office, although no rule

rule to plead be given, or else the defendant must within that time procure a special imparlance; and a plea in abatement otherwise pleaded is a mere nullity, and the plaintiff may sign judgment. *Rep. and Caf. of Pract. C. P.* 64. *Pract. Reg. C. P.* 286. *Barnes* 331, 334.

For want of affidavit to plea in abatement plaintiff may sign judgment.

If a plea which ought to be verified by affidavit, has not an affidavit annexed, the plaintiff may *instanter*, without applying to the court for leave, sign judgment as though no plea had been delivered. *Pract. Reg. C. P.* 4, 282. *Rep. and Caf of Pract C. P.* 38.

And if a plea which ought to be [illegible] hand, be delivered without.

If a plea, which ought to be signed by a serjeant, be delivered without a serjeant's hand, the plaintiff may sign judgment as if no plead had been delivered. *Id. ib.*

What pleas do not require a serj. hand.

The following pleas do not require a serjeant's hand, *viz.*

Comperuit ad diem,	*Per minas,*
Son assault demesne,	*Solvit ad diem,*
Plene administravit,	*Ne unques executor,*
Riens per discent,	*Infra ætatem.*
Nul tiel record,	

Rep. and Caf. of Pract. C. P. 41. *Pract. Reg. C. P.* 282. *Barnes* 365.

Nor do

Ne unques administrator,	*Non Assumpsit,*
Non est factum,	Not guilty. *Barnes*
Nil debet.	365. *Per Dures.*

Wherever the plea is signed by a serjeant, the replication must likewise be signed. *Barnes* 365.

The

The demand of a plea must be in writing, and the demand of a plea indorsed on the back of the declaration is insufficient, except where a prisoner is defendant. See Tit. *Prisoner postea.*

Demand of a plea to be in writing.

The plaintiff cannot sign judgment for want of a plea, 'till the afternoon of the day after the rule to plead is out.

When to sign judgment.

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot sign judgment 'till the afternoon of the day after the time given by the order is expired; as if by the order the defendant has till *Monday* to plead, the plaintiff can't sign judgment before *Tuesday* in the afternoon. *Pract. Reg. C. P.* 287. *Rep. and Cas. of Pract. C. P.* 67.

When on a judge's order for time to plead.

A summons for time to plead ought not to be taken out after the rule to plead is out; and if such summons be taken out and served, 'tis no stay of proceedings. *Rep. and Cas. of Pract. C. P.* 137. *Barnes* 254.

No summons to be taken out after rule to plead is out.

If the defendant takes out a judge's summons for time to plead, the plaintiff cannot sign judgment 'till the summons is discharged. *Rep. and Cas. of Pract. C. P.* 144. *Barnes* 240, 255.

After summons no judgment till summons discharged.

A plea of tender is not an issuable plea within the meaning of a judge's order for time to plead, on pleading an issuable plea. *Rep. and Cas of Pract. C. P.* 134.

Plea of tender.

Nor that plaintiff was an infant, and ought to sue by *prochein amy*, and not by attorney; for this is a plea in abatement, and consequently null and void. *Barnes* 263.

 Nor

Nor a recovery in another court, for although this be an iffuable plea within the letter of the judge's order, yet it is not within the true intent and meaning of it. *Wilf. Rep. C. B.* 117. 3 *Wilf. Rep.* 33 *S. P.*

Nor a general performance of covenants, not figned by council. *Barnes* 354.

Defendant obtained an order for time to plead, pleading an iffuable (*a*) plea, rejoining (*b*) *gratis*, and taking fhort (*c*) notice of trial within term; defendant pleaded accordingly, and plaintiff replied; and then defendant, inftead of rejoining, demurred, merely for delay; plaintiff not having time to fet down demurrer to be argued within term, figned judgment; which defendant moved to fet afide, but upon hearing council on both fides, court confidered defendant's practice a mere trick, and therefore denied the motion. *Barnes* 271.

Stat. of limitations.

If judgment be fet afide on payment of cofts, and pleading an iffuable plea, the defendant cannot plead the ftatute of limitations; for it is not an iffuable plea within the meaning of the rule, for fetting afide the judgment, the rule fhould be on pleading the general iffue.

(*a*) Viz. a plea in chief, upon which plaintiff may take iffue. *Barnes* 263.

(*b*) By which is meant rejoining without the common four-day rule. *Barnes* 271.

(*c*) On order for *fhort* notice, two days is the leaft. *Barnes* 301.

Defendant

Defendant cannot plead, "That no such letters of administration, as set forth in declaration, were ever granted to plaintiff," without craving oyer thereof, and setting them out in his plea. 2 *Wils.* 413.

What time the defendant has to plead after oyer.

If the defendant crave oyer, he shall have as many days to plead after oyer given, as he had to plead at the time oyer was demanded. *Pract. Reg. C.P.* 26, 28, 300. *Rep. and Cas. of Pract. C.P.* 81. *Barnes* 238, 254.

If oyer be demanded after rule to plead is out, the plaintiff may sign judgment notwithstanding; but if the defendant has eight days to plead, he may demand oyer at any time within the eight days, notwithstanding the four-day rule to plead is expired. *Barnes* 268. See 2 *Wils.* 413.

On oyer defendant intitled to witnesses names and all indorsements.

If the defendant prays oyer and a copy of a bond, he is intitled to inspect it and have a copy of the whole, with the witnesses names, and all memorandums subscribed and indorsed. *Barnes* 327.

If defendant makes the oyer no part of his plea, plaintiff may make it part of the issue.

If the defendant prays oyer, and afterwards delivers a plea without making the oyer part of it, the plaintiff may make up the issue with oyer; for the pleadings are supposed to be *Ore tenus* at the bar, and a record is to be made of what is done there. *Barnes* 327.

Within what time the defendant ought to deliver oyer of a deed pleaded by him.

The defendant pleaded a release, with a *Profert hic in curia*; on the 12th of *November* the plaintiff craved oyer, and on the 14th signed judgment, for want of oyer being given him; and it was held that this judgment was regularly signed, that from the 12th to

the 14th was a reasonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to set aside the plea; for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blaxland* against *Burgis*, *Mich.* 7 *Geo.* 2. *Pract. Reg. C. P.* 301. *Barnes* 245. *Rep. and Cas. of Pract. C. P.* 95.

Def. may waive his special plea, and plead the general issue.

The defendant may waive his special (*d*) plea, and plead the general issue the same term, without payment of costs or application to the court. 2 *Wils.* 391. but not *vice versa*, unless under special circumstances. See 2 *Wils.* 253, 254.

Sed. Q. If the plaintiff has replied, whether the defendant must not apply to the court and pay costs? See *Barnes* 127.

Can't withdraw a plea of tender.

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea, and plead the general issue. *Barnes* 349.

Plea refused to be amended, though the application was before argument; defendant having likewise pleaded another plea in which issue was joined, trial had, and verdict for plaintiff. *Barnes* 25.

Plea of *plene administravit*, amended on payment of costs. *Barnes* 25.

(*d*) Nor, if it be a sham plea. 2 *Wils.* 369.

Of

Of double pleas.

Double pleas allowed.

DOUBLE pleas allowed, *viz.*—*Non assumpsit*, and *Non assumpsit infra sex annos*. *Barnes* 329. denied *Pract. Reg. C. P.* 307, 308, 3 9.

Non assumpsit, and a discharge under the insolvent debtors act. *Pract. Reg. C. P.* 312. *Barnes* 343.

In replevin, leave given to avow two matters, *viz.* a justification of the distress under a lease for years, and that the goods distrained were not the property of the plaintiff. *Barnes* 338. *Pract. Reg. C. P.* 184.

In trespass *Non cul.* and *Liberum tenementum alterius*. *Barnes* 326, 340. *Pract. Reg. C. P.* 315. *Barnes* 351, 356 *Vide infra.*

Solvit ad diem, and a mutual debt. *Barnes* 340.

Tender to part, and *Non assumpsit* to all the rest. 3 *Wils.* 145.

Damage feasant, and under a demise from the defendant to the plaintiff. *Barnes* 339. *Pract. Reg. C. P.* 315.

Damage feasant and for rent in arrear. *Pract. Reg. C. P.* 316. *Barnes* 340.

Non assumpsit, a set-off, and a tender, as of last term. *Barnes* 353, 357, 360, 366.

Non cepit. Cattle property of another person, not of plaintiff; and *liberum tenementum*. *Barnes* 364.

A tender to the first count, and *Non assumpsit* to the residue. *Barnes* 362.

Non

Non assumpsit, and *Plene administravit*. Barnes 348. Pract. Reg. C. P. 311, 312.

Plene administravit, and a set-off. *Pract. Reg. C. P.* 313. *Barnes* 347.

Ne unques executor, and *Plene administravit*. Barnes 355, 365.

Non est factum, and *Ne unques executor*. Barnes 352.

Non est factum, and duress. *Barnes* 259.

Not guilty and a general release *Barnes* 347, 348.

Not guilty; and 4 guineas paid in satisfaction of all trespasses to such a time. *Barnes* 349.

Not guilty, *Son assault*, and satisfaction for all trespasses. *Barnes* 352.

Not guilty, *Son assault*, and *Molliter manus imposuit*. Pract. Reg. C. P. 315. *Barnes* 351, 35[illegible], 35[illegible]

Not guilty, and a justification [illegible] trespass. *Barnes* 35[illegible], 350, 365.

Non cepit, and to avow the taking. *Barnes* 365.

Not guilty, and a tender of amends. *Barnes* 366.

Double plea denied. Double pleas denied, *viz.*—*Non assumpsit*, and a release, as contradictory. *Barnes* 320. *Pract. Reg. C. P.* 311.

Non assumpsit, *Non assumpsit infra sex annos*, and leave to bring money into court.

Non assumpsit, and infancy, because it may be given in evidence. *Barnes* 363.

Solvit ad diem, and *Riens per discent*, the like. *Barnes* 3[illegible]2.

2 *Non*

Non est factum, and *Solvit ad diem*. Barnes 363.

Liberum tenementum, and a justification, the like. *Barnes* 329.

Nil debet, and *Nil habuit in tenementis*, the latter may be given in evidence. *Barnes* 333. *Pract. Reg. C. P.* 314.

Not guilty, and *Liberum tenementum*, denied as (*e*) contradictory, and no affidavit being produced to verify that the defendant's case required both pleas for his defence. *Barnes* 350.

In trover Not guilty, and that plaintiff became a bankrupt and his effects assigned. *Barnes* 360.

Non assumpsit, and a tender. *Barnes* 366. 3 *Wils.* 145.

Not guilty, and a licence. *Barnes* 349, 364. without an affidavit, denied: where the pleas are contradictory, the defendant should make it appear by affidavit, that it is necessary for his defence to insist upon both. If the trespass be by cattle, the nature of the case is sufficient; an affidavit is not necessary, because the fact may not be in the party's knowledge; if by the party himself, he must move upon affidavit. *Barnes* 351.

Not guilty, and a release of a particular trespass, is never admitted, but a Not guilty and a general release has been admitted where

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(*e*) Court, upon motion to plead *double*, never gives leave to plead *contradictory* matters. *Barnes* 290.

an

an affidavit has been produced. *Barnes* 351.

Leave to plead double any time before judgment.

The defendant may have leave to plead double any time before judgment signed, though the rule to plead be out, but not before appearance. *Barnes* 329, 331.

Not after single plea.

After the defendant has pleaded a single plea, he can't have leave to add another. *Barnes* 361.

Nor after money brought into court.

After the defendant has paid money into court, he can't have leave to plead double. *Barnes* 339. *Pract. Reg. C. P.* 317

Defendant cannot plead several matters in a *Qui tam* action on [illegible]

On double plea, if plt. has judgment in one, he can't enter a Noli prosequi *as to the other.*

The defendant, with leave of the court, pleaded *[illegible]*, and *Non assumpsit infra sex annos*; to the last the plaintiff replied an original [illegible] joined on *Nul tiel record*, and judgment for the plaintiff, whereupon he executed a writ of inquiry, but did not proceed on the [illegible] of *Non assumpsit*. The defendant moved to set aside the writ of inquiry; the plaintiff insisted he might enter *Noli prosequi* on the plea of *Non assumpsit*, and take his execution on the issue that was found for him. The defendant insisted both pleas went to the whole declaration; and if any one issue was found for the defendant, the plaintiff was barred of his demand. *Cur'*: It is a judgment only as to part, and not upon the whole proceedings, and the inquiry could not be executed before the other issue was tried. The defendant has a double defence given him, and if any one be found for him, he shall be excused, therefore this writ of in-

quiry

quiry is wrong; and if this way of proceeding was to be allowed, there is an end of pleading double. *Prior* v. *Com. Ilay* Exec. *Hil.* 7 *G.* 2. *Pract. Reg. C. P.* 320.

If either found for the def. the plaintiff can't recover.

Action on a promissory note, double plea, viz. *Non assumpsit*, and *Non assumpsit infra sex annos*: To the latter the plaintiff replied an original, and on *Nul tiel record* had judgment; but on trial upon the *Non assumpsit* was nonsuited. On the issue in which he had judgment he executed a writ of inquiry, which the defendant moved to have set aside, and said, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the statute for the amendment of the law, where several matters are pleaded by the defendant, if any be found for the plaintiff, he shall recover. *Cur'*: This is a consideration. Adjourned. *Postea* writ of inquiry set aside. *Prior* v. *Com. Ilay* Exec. *Mich.* 8 *Geo.* 2. *Id. ib.*

Def. to pay for a copy of the issue, and entring his pleadings.

When issue is joined, the plaintiff delivers the defendant's attorney a copy thereof on treble penny stamped paper, he paying for the same after the rate of 4 *d.* a sheet, besides the duty; and for the entry of his plea, according to the length, if the general issue, only 2 *s.* and for filing his warrant of attorney 8 *d.* v. *postea fol.* But note, if the issue be of the same term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings subsequent to the declaration, for

for he is not obliged to pay for two copies of the declaration in the same term.

Where plt. appears for the def. he may charge it on the back of the issue.

If the plaintiff enter the appearance for the defendant, he may charge for it on the back of the issue, and if the defendant's attorney will not pay it, he may sign judgment.

Deft's attorney, if copy of issue overcharged, may tender what really due.

The practice was formerly, that the defendant's attorney must pay for the copy of the issue at all events, or the plaintiff might sign judgment; and if it be overcharged, the defendant might apply to the court. But now it is held, that if the defendant's attorney is ready to pay, and tenders what is really due, it is sufficient. Where the defendant is a prisoner, and no attorney appears to be concerned for him, the plaintiff cannot sign judgment for not paying for the copy of the issue.

How if def. be a prisoner, and no attorney concerned.

Method of making up the issue.

The method of making up the issue in this court is the same with the method used in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the issue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An issue by original begins thus:

In the Common Pleas.

Trinity *term (the term the issue is joined) in the year of king* George *the third.*

Middlesex, *to wit.* *A. B.* late of *Westminster* in the county of *Middlesex*, gentleman, was attached to answer *C. D.* of, &c.

[to

[*to the end of the declaration*] And thereof he bringeth ſuit, and ſo-forth.

Then begin a new line, and enter the pleadings to the end of the iſſue, after which follows the award of the *Venire* in this form.— Therefore it is commanded to the ſheriff, that he cauſe to come here from the day of, &c. (*ſome return before the day of trial*) Twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Becauſe as well, &c.

Venire facias *awarded.*

In the Common Pleas.

Trinity *term in the ſeventeenth year of the reign of king* George *the third.*

HERRETOFORE as it appeareth in the term of *Eaſter* laſt paſt in the 864. roll it is thus contained. *Middleſex, to wit*, Be it remembred, that on the 25th day of *May* in this ſame term *R. L.* came here into court by *L. R.* his attorney, and exhibited to the juſtices of our lord the king of the bench here his bill againſt *M. U.* gent. one of the attornies of the court of our ſaid lord the king of the bench here preſent, here in court in his proper perſon, in a plea of treſpaſs on the caſe, the tenor of which ſaid bill followeth in theſe words, *to wit*, To the juſtices of our lord the king of the bench. *Middleſex, to wit*, *R. L.* by *L. R.* his attorney complaineth againſt *M. U.* gent. one of [*ſet forth the whole bill* verbatim

Entry of an iſſue on a bill againſt an attorney, where the iſſue is joined in a term ſubſequent to that in which the bill was filed.

verbatim *to*] And thereupon he prayeth relief, *&c.* Pledges of prosecuting *John Doe* and *Richard Roe.*

Imparlance.

And the said *M.* in his proper person cometh and defendeth the force and injury, when, *&c.* and prayeth leave to imparl thereupon here, until *Friday* next after the morrow of the Holy *Trinity*; and hath, *&c.* The same day is given to the said *R.* here, *&c.* And now here at this day cometh as well the said *R.* by his attorney aforesaid, as the said *M.* in his proper person. And upon this the said *R.* prayeth, that the said *M.* may answer to his said bill, *&c.* And the said *M.* as before defendeth the force and injury, *&c.* And saith, that he did not undertake and promise in manner and form as the said *R.* above declareth against him; and of this he putteth himself upon the country, *&c.* And the said *R.* doth so likewise, *&c.* Therefore the sheriff is commanded that he cause to come here on next after Twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Because as well, *&c.*

See more of this among the pleadings at the end of the book.

In country causes issue is to be delivered to the agent in town, and not to the country attorney.

In country causes the issue must be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attornies, that the issue should be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been signed,

ſigned, and held regular. But where the defendant has pleaded by his country attorney, the iſſue may be tendered to the country attorney, and if not paid for by him, judgment may be ſigned.

Except.

Attorney to enter his warrant on record.

Every attorney ſhall enter his warrant of attorney in every ſuit upon record in court, on pain of 10*l.* and further puniſhment by impriſonment, at the diſcretion of the court. *Stat.* 32 *H.* 8. *c.* 30. §. 2. made perpetual. 2 & 3 *E.* 6. *c.* 32. and *vide ſtat.* 18 *Eliz.* *c.* 14. § 3.

When to be filed.

Warrants of attorney are to be filed of the term wherein any exigent is awarded, demurrer or iſſue joined, or judgment entered, which ſhall firſt happen, and to be filed upon or before the eſſoin-day of every *Trinity-Term*, and within one-and-twenty days after the end of every other term. *Lil.* 14, 15. *Car.* 2.

Deft.'s attorney, on receiving the iſſue, to pay the plt's attorney the fee for filing his warrant, otherwiſe judgment.

Every plaintiff's attorney who ſhall proſecute any cauſe to iſſue, ſhall, upon the delivery of the copy of ſuch iſſue, receive of the defendant's attorney the fee for filing his warrant therein; and in caſe the defendant's attorney ſhall refuſe to pay for the ſame, the plaintiff's attorney may ſign his judgment in like caſe, as if the defendant's attorney had refuſed to pay for the copy of the iſſue, or the entry of his plea; and the plaintiff's attorney ſhall file as well the defendant's as the plaintiff's warrant of attorney. *Lil.* 2, 3. *Jac.* .

Plt.'s attorney to file his

The plaintiff's attorney in any action or ſuit ſhall file his warrant of attorney with the

warrant the term he declares, and the deft.'s attorney the term he appears.

proper officer the ſame term he declares, and the attorney for the defendant ſhall file his warrant of attorney, as aforeſaid, the ſame term he appears, under the penalties inflicted upon attornies by any former law, for default of filing their warrants of attorney. *Stat.* 4 & 5 *Annæ. c.* 16.

No judgment (except, &c.) to be ſign'd before the judgment paper be ſtamped by the clerk of the warrants.

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reverſed, and plaintiffs loſt their debts; it was ordered therefore that no judgments whatſoever (except final judgment upon *poſteas*, writs of inquiry, and *Non pros'*) ſhall be ſigned by any of the prothonotaries, unleſs the ſtamp of the clerk of the warrants be impreſſed on the paper, whereon ſuch judgment is to be ſigned, whereby it may appear the warrants of attorney are duly filed. *Mich.* 5 *Geo.* 2.

The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges 8 *d.* for filing the defendant's warrant of attorney, and which he generally files at the ſame time he files the plaintiff's warrant, and on the ſame piece of parchment.

Theſe warrants are to be wrote on parchment in the following form:

Eaſter

Hilary *Term in the seventeenth year of the reign of* George *the third.*

Middlesex, E. F. putteth in his place *R. C.* his attorney against *A B.* late of, *&c.* yeoman, in a plea of trespass on the case [*or otherwise, as the action is.*]

Plaintiff's warrant of attorney.

Middlesex, A. *B.* late of, *&c.* yeoman, putteth in his place *N. F.* his attorney, against *E. F.* in the plea aforesaid.

Defendant's warrant of attorney.

If the defendant be described in the pleadings with an *Alias dict.* or the plaintiff or defendant be an executor or administrator, he must be named in the warrant of attorney in the same manner exactly as in the pleadings.

The nature of the action must be expressed in the warrant, according as the case shall be; as thus: In a plea of debt. In a plea of trespass. In a plea of trespass on the case. In a plea of trespass and ejectment of farm. In a plea of trespass and assault. In a plea of trespass, assault and imprisonment.

On the back of the issue you give notice of trial, thus:

Mr. *T. V.*

Take notice of trial in this cause for the sitting after this present *Michaelmas-term*, at *Guildhall, London.*

Notice of trial.

Your humble servant,

Jan. 5th 1778. L. R. *attorney for the plaintiff.*

Eight days in London *or* Middlesex.

If the trial is to be in *London* or *Middlesex*, (and the defendant dwells within 40 miles of *London*) there must be eight days notice thereof given exclusive of the day whereon the notice is given. *Mich.* 1654.

When 14 days in London *or* Middlesex.

If the defendant lives above forty miles from *London*, there must be fourteen days notice of such trial to be had in *London* or *Middlesex*, exclusive of the day of the notice. *Same rule.*

Eight days in the country.

Of trials in the country there must be eight days notice given exclusive of the day of notice. *Same rule.* But altered as follows.

When ten days notice of trial

No cause whatsoever shall be tried at *Nisi prius* before any judge or justice of assize or *Nisi prius*, or at the sittings in *London* or *Westminster*, where the defendant resides above forty miles from the said city respectively, unless notice of trial in writing has been given at least ten days before such intended trial. *Stat.* 14 *Geo.* 2. *c.* 17. §. 4.

This act does not alter the above rule, for 14 days notice of trial in London *or* Middlesex, *where the defendant lives above 40 miles from* London.

Defendant lived about 40 miles from *London*, and plaintiff proceeded to trial at sittings there, upon *ten* days notice; no defence was made, and defendant insisting, that he was intitled to 14 days notice of trial, moved to set aside the verdict, and had a rule to shew cause, which was made absolute. Before this act, 14 days notice were the settled practice, and, unless obliged, court will not be bound by an act made to take away a benefit from defendant; the practice or law of the court cannot be taken away but by negative words, viz. that there shall be no

more than ten days; 14 days notice notwithſtanding this act, are ſtill neceſſary. *Barnes* 305.

And ſix days notice of countermand.

And in caſe any perſon ſhall have given ſuch notice of trial as aforeſaid, and ſhall not afterwards duly countermand the ſame in writing at leaſt ſix days before ſuch intended trial, ſuch party ſhall be obliged to pay unto the party to whom ſuch notice of trial ſhall have been given as aforeſaid, the like coſts and charges as if ſuch notice of trial had not been countermanded. *Same ſtat.* §. 5.

Notice of trial when to be given to attorney or agent.

Notice of trial on an old iſſue may be given to the attorney in the country, for it may be given either to the attorney or the agent, but where notice of trial is given on the iſſue book, it muſt be given to the agent, becauſe the iſſue can be delivered no where but in town. Notices of trial, and countermands in notices of executing writs of inquiry and countermands may be given either to the attorney in the country, or to the agent in town; but of thoſe things which are done only in town, notice, muſt be given to the agent; and all notices, where the party hath a known attorney, muſt be given to that attorney or his agent, and not to the party himſelf.

Of notices in general.

A term's notice where no proceeding for four terms excl. &c.

In all caſes where there have been no proceedings for four terms, excluſive of the term in which the laſt proceeding was had, the party who deſires to proceed again, ſhall give a term's notice to the other of ſuch proceeding; ſuch notice ſhall be given before the eſſoin-

To be given before the eſ-

soin day of the term. essoin-day of the fifth or other subsequent term; a judge's summons, if no order be made thereupon, shall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, shall be deemed a proceeding within this rule. *Pasch.* 13 *Geo.* 2.

What deemed a proceeding.

Heretofore, where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined issue, which he was not obliged to do till a four-day rule for that purpose was expired. But now in all cases where the plaintiff concludes *ad patriam*, the defendant's attorney must accept notice of trial on the back of such pleadings, whether the same be delivered to the defendant's attorney or agent, or left in the office; and such notice shall be as effectual as if issue had been joined. *Trin.* 2 *Geo.* 1.

Where the plaintiff concludes ad patriam, *the defendant to accept notice of trial on the back of the pleading.*

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings (pursuant to last rule) if the defendant does not join issue before the rule is out, then after judgment obtained the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry from the time that the notice of trial was given on the back of the pleadings. *Ibid.* 6 *Geo.* 1.

And if don't join in issue, to accept of notice of inquiry from the time of the notice of trial.

Notice of trial, or of executing a writ of inquiry, given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the notice may be given to the defendant. See *Barnes* 300. See *id.* 306, 307.

Notice of trial not to be given to the defendant if his attorney be known.

Where

Where the plaintiff may give a short notice of trial, as where the defendant has had time given him to plead on taking short notice of trial, the plaintiff must give him as much notice as he can; two days at least. *Barnes* 301.

Where the plt. may give short notice, he must give as much as he can.

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cause tried by proviso, he must give the same notice of trial as the plaintiff should have done. *Barnes* 299.

For trial by proviso def. must give the same notice as plaintiff should have done.

The next thing to be done is to enter the issue, and prepare the *Nisi prius* record for trial, which must be ingrossed on a piece of parchment stamped with a double half-crown stamp, which you must do in this manner:

Of making up the Nisi prius *record.*

In the Common Pleas.

Pleas at Westminster, *before Sir* William De Grey, *knight, and his companions, justices of our Lord the king of the bench, of* Easter *term in the seventeenth year of the reign of our sovereign* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

Roll.

Middlesex, *to wit*, *C. L.* late of, &c. gentleman, was attached to answer *R. R.* of a plea of trespass, on the case; and whereupon

upon the said *R. R.* by *J. S.* his attorney complaineth, that whereas, &c. (*to the end of the issue and award of the* Venire.)

Note; In the *Common Pleas* the *Placita* is wrote but once, except on the death or change of a chief justice, or on an old record, in which case you write a second *Placita*; then your write the *Jurata* in this manner.

Middlesex, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, &c. gentleman, in a plea of * trespass on the case, are respited here until on the morrow of the Holy *Trinity* (the return of the *Habeas corpora juratorum*, and which should be the next return after the day of trial) unless Sir *Eardely Wilmot*, knight, the king's chief justice of the bench, here assigned by form of the statute in that case made and provided, shall come before, on *Tuesday*, the day of [*the day of the sittings*] at *Westminster*, in the great hall of pleas, there, commonly called *Westminster-hall*, in the said county of *Middlesex* (if in *London*, say, at the *Guildhall* of the city of *London* aforesaid) for default of the jurors, because none came: Therefore let the sheriff have the bodies of the several persons mentioned in the panel annexed to the writ of *Habeas corpora juratorum*. And be it known

* In replevin say, taking and unjustly detaining the cattle of the said *R.*

that

that the justices here in court in this same term delivered a writ thereupon to the deputy of the sheriff of the county aforesaid, to be executed in form of law, *&c.*

If the trial is to be had at the assizes, the form of the *Jurata* is as follows:

For the assizes.

Lincoln, *to wit*, THE jury between *R. R.* plaintiff, and *C. L.* late of, *&c.* gentleman, in a plea of trespass on the case, is respited here until on the morrow of *All Souls*, unless our lord the king's justices, assigned to take the assizes in the county aforesaid by form of the statute in that case made and provided, shall come before on (*the day the assizes are to be held*) at (*the place where they are to be held*) in the county aforesaid, for default of the jurors, because none came: Therefore, *&c.* (*as before.*)

When the *Nisi prius* record is prepared, you are to carry it, and the roll whereon you have entered the issue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treasury, who will examine and see that the *Jurata* is rightly entered, and sign and seal the record.

No record of Ni. Pri. *to be signed before issue entered.*

No record of *Nisi prius* is to be signed before the issue be entered upon the roll. *Mich.* 1654. *Pas.* 5 *W.* & *M.*

Issues to be entered the same term they are joined.

And all issues are to be entered of the term they are joined. *Pas.* 5 *W.* & *M. Hil.* 11 *Geo.* 1.

Every

In what manner records of Niſi prius *are to be ingroſſed.*

Every record of *Niſi prius* is to be ingroſſed in a fair legible character, and ſo entered on the roll; the beginning of every pleading to begin with a new line, and the firſt word in a greater character than the reſt; and in all actions that have divers narrs, [*i. e* counts] notice thereof muſt be given by figures in the margin of ſuch record of *Niſi prius*; and all records of *Niſi prius* that ſhall be ingroſſed in this court are to be of the exact breadth of the rolls of the court, and no broader or leſſer. *Trin.* 29 *Car.* 2.

Within what time they muſt be made up for the aſſizes.

Records of *Niſi prius* for trials at the aſſizes ſhall be ſigned by the reſpective prothonotaries, and ſigned and ſealed by the clerk of the treaſury within the ſpace of three weeks next after the end of every *Hilary* term, and of every *Trinity* term, and not afterwards unleſs by ſpecial order. *Trin.* 29 *Car.* 2.

No record of Niſi prius *to be ſealed, unleſs ſigned by the clerk of the warrants.*

The clerk of the treaſury ſhall not ſign or ſeal any record of *Niſi prius*, unleſs the ſame ſhall be firſt ſigned or ſtamped by the clerk of the warrants. *Hil.* 2, 3 *Jac.* 2.

Attendance will be given for ſealing records of *Niſi prius*, in this court, *viz.*

For *London* and *Middleſex* at the treaſury office, in *Weſtminſter-hall*, during the term, and the ſettings for *Middleſex*, from the ſitting to the riſing of the court;

For *London* after the ſittings for *Middleſex* are over, at the lord chief juſtice chambers, in *Serjeants Inn*, from 5 to 7 o'clock, in the afternoon during the ſittings in *London*.

For

For the assizes, at the *L. C.* justice's chambers from 10 to 12 o'clock in a forenoon, and from 5 to 7 in an afternoon, as usual, during the time of the assizes. By notice fixed up in the common pleas office, tempore *Wilmot* Ch. J.

As no continuances are necessary to be inserted in the record of *Ni. Pri.* if defendant dies after issue joined, and before the day of *Ni. Pri.* suggestion thereof, and award of *Ven. Fa.* entered on the roll after trial, sufficient. *Barnes* 469.

No record or writ of *Ni Pri.* is received at any sitting after Term in * *Middlesex*, unless delivered to, and entered with the marshal within two days after the last day of every term. Rule of *E.* 2 *Geo.* 3. *C. B.* *Barnes* 494.

The form of a Venire facias.

Venire facias.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Essex*, greeting. We command you, that you cause to come before our justices at *Westminster*, on the morrow of the *Purification* of the blessed *Mary*, twelve free and lawful men of the body of your coun-

* Nor in *London*, unless entered the day before the day, to which the sitting is adjourned. Same rule. *Barnes* ib.

ty,

	s.	d.
Duty	2	0
Signing	1	4
Seal	0	7
		11

ty, each of whom has ten pounds of lands, tenements or rents by the year at least, by whom the truth of the matter may be better known, and who are in no ways of kin, either to *R. K.* the plaintiff, or to *J. W.* late of, &c. or to *W. S.* late of, &c. [*if the defendant be declared against with an* Alias dict', *or as an executor or an administrator, he must be here described as in the pleadings*] to make a certain jury of the county between the parties aforesaid, in a plea of taking and unjustly detaining cattle [*as the action is*] because as well the said *J. W.* and *W. S.* (*the party who first takes the issue*,) as the said *R. R.* between whom the matter in variance is, have put themselves upon that jury; and have there the names of the jurors and this writ. Witness Sir *William De Grey*, knight, at *Westminster*, the 23d day of *January* in the seventh year of our reign.

Dickins.

Insert the cause of action in the *Venire* as the case shall be, thus:

Debt. In a plea of debt.

Case. In a plea of trespass on the case.

Assault. In a plea of trespass and assault.

Assault and imprisonment. In a plea of trespass, assault and imprisonment.

Ejectment. In a plea of trespass and ejectment of farm.

Covenant. In a plea of breach of covenant.

Replevin. In a plea of taking and unjustly detaining cattle.

Detinue. In a plea of detaining goods, or writings.

If

If the defendant carries down the cause to be tried by proviso, the writ runs thus:

By proviso. And have here the names of the jurors and this writ; provided always, that if two writs shall thereupon come to you, that you only return one of them to our said justices at *Westminster*, at the time aforesaid.

You carry this writ to the prothonotary to be signed, for which you pay him 1*s.* 4*d.* and then to the seal office to be sealed, for which you pay 7*d.*

When you have this writ returned by the sheriff, you carry it to the clerk of the jury, and he will make out a writ of *Habeas corpora juratorum*, which you carry to the sheriff, and he also returns.

The form of the Habeas corpora juratorum.

Habeas corpora. Officina brev. 140.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *E.* greeting. We command you, that you have before our justices at *Westminster*, from the day of *Easter* in 15 days [*the day in bank the next return after the trial*] or before our justices assigned to take the assizes in your county, by force of the statute in that case provided, if they shall come before, on the day of [*the day the assizes are held*] at [*the place where*] in your county, the bodies of the several persons

	s.	d.
Fi Ven.	0	4
Ha. Co.	1	8
Duty	2	0
Seal	0	7
	4	7

ſons named in the panel annexed to this writ, jurors ſummoned in our court before our juſtices at *Weſtminſter*, between *R. K.* plaintiff, and *J. W.* late of, *&c.* and *W. S.* late of, *&c.* of a plea of taking and unjuſtly detaining cattle, [*as the action is*] to make that jury; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Harriſon.

The form of the Subpœna ad teſtificandum.

Subpœna ad teſtificandum.

	s.	d.
Duty	2	0
Signing	1	0
Seal	0	7
	3	7

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command, and firmly injoin you and each of you, that laying all other matters aſide, and notwithſtanding any excuſe, you be in your proper perſons before our juſtices at the aſſizes to be held, at [*the place where the aſſizes are to be held*] in the county of *S.* on [*the day when*] next enſuing, to teſtify and ſpeak the truth in a certain matter of controverſy pending undetermined in our court before our juſtices at *Weſtminſter* between *A. B.* plaintiff, and *C. D.* late of *E.* in the ſaid county of *S.* gentleman, defendant, in a plea of treſpaſs; [*as the action is*] and this you are not to omit, nor is any one of you to omit, under

under the penalty on each of you of one hundred pounds. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the day of in the year of our reign.

Cooke.

If the trial be to be had in *London*, you ſay thus,—That, *&c.* you be before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Guildhall*, *London*, on [*the day of ſittings*] to teſtify, *&c.*

If in *Middleſex* thus; before Sir *John Eardley Wilmot*, knight, our chief juſtice of the bench at *Weſtminſter*, in the great hall of pleas there, called *Weſtminſter hall*, to teſtify, *&c.*

This *Subpœna* you carry to the proper prothonotary to be ſigned, for which you pay 1 *s.* and to the ſeal-office to be ſealed, for which you pay 7*d.* and then you make out tickets for each of the witneſſes in the following form:

Mr. *R. B.*

Subpœna *ticket.*

By virtue of a writ of *Subpœna* to you directed, and herewith ſhewn unto you, you are commanded perſonally to be and appear before his majeſty's juſtices of aſſize [*or the chief juſtice as before directed, according as the caſe is*] at [*the place*] on the day of by of the clock in the noon of the ſame day, to teſtify the truth, according to your knowledge, in a certain cauſe now depending, and there

there to be tried between *A. B.* plaintiff, and *C. D.* late of in the county of gentleman, defendant, in a plea of trespass [*as the action is*] on the part of the plaintiff [*or the defendant, if at his instance subpœna'd*] and hereof you are not to fail, upon pain of one hundred pounds. Dated the day of . in the year of our Lord 1778, and in the year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c.

J. R. attorney.

Cause to be entered with marshal.

Before you go to trial you must enter your cause with the judge's marshal.

Formerly four days before the day of trial.

Causes to be tried in *London* or *Middlesex* ought to be entered in the marshal's book four days before the day of trial. *Mich.* 1654.

Now two.

But notwithstanding this rule, and though there is none other to the contrary, two days at this time are reckoned sufficient.

Records to be brought in before the sittings after term.

Ne recipiaturs shall be allowed to be entered for the sittings at *Nisi prius* after every term, unless the records of *Nisi prius* and the writs be made up and brought into court on or before the days and sittings respectively. *Hil.* 8 *Geo.* 1.

On circuit writ and record to be entered together.

In every cause to be tried in the circuits, the writ and record shall be entered together, and no record shall be received without the writ. *Trin.* 10 & 11 *Geo.* 2.

On circuit in what time record to be

No writ and record of *Nisi prius* shall be received at the assizes in any county in *England*,

land, unless they shall be delivered to, and entered with the marshal, before the first sitting of the court after the commission-day, except in the counties of *York* and *Norfolk*; and there the writs and records shall be delivered to, and entered with the marshal before the first sitting of the court, on the second day after the commission-day, otherwise they shall not be received. *Hil.* 14 *Geo.* 2.

brought and entered.

Every cause shall be tried in the order in which it is so entered, without any preference or delay, unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of the cause, so put off, as to him shall seem just. *Same rule.*

Causes to be tried in the order entered.

A list of the causes, when so entered as aforesaid, shall be made by the marshal, and forthwith fixed up in some public place in the *Nisi prius* court, there to remain during the whole time of the assizes. *Same rule.*

List of causes to be made and hung up.

If the cause be to be tried in *London* or *Middlesex*, you pay, for entering the cause with the marshal, 13 *s.* 9 *d.* *viz.* the chief justice 10 *s.* 9 *d.* Marshal 2 *s.* Associate 1 *s.*

Entring fee in London *or* Middlesex.

If the trial be at the assizes, the fee for entering the cause is but 11 *s.* 8 *d.* *viz.* the judge 6 *s.* 8 *d.* Clerk of assize 2 *s.* Marshal 2 *s.* Cryer 1 *s.*

At the assizes.

If the plaintiff gives notice of trial for the assizes, and don't bring the trial on, he can't go down to trial again without new notice, unless by consent or rule of court.

If plt. don't go to trial at assizes, must give new notice.

 But

In London or Middlesex may give new notice, before the day of sitting, for the next sitting.

But in *London* or *Middlesex*, if the plaintiff gives notice of trial for one sitting, and be not provided to proceed, he may give notice before that sitting, that he will try it at the next sitting. *Mich.* 1654.

Plt. can continue his notice but once.

The plaintiff cannot continue his notice of trial a second time, *i. e.* he can give short notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice. See *Barnes* 301. *Rich. Pract. Reg.* 394. *Co. Cas.* 146.

Can't countermand and continue in the same notice.

The plaintiff gave notice of trial for the first sitting within term, then gave notice that he countermanded the notice of trial for the first sitting, and continued it for the second; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court said the plaintiff could not countermand and continue in the same notice, and set the verdict aside. *Smith* v. *Hough*, *Hil.* 11 *Geo.* 2. *Barnes* 301. *Pract. Reg. C. P.* 394. *Rep. and Cas. of Pract. C. P.* 146.

If plt. don't proceed to trial according to notice, nor countermand, he shall pay costs.

In case the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court in excuse of such costs. *Mich.* 1654.

Both plt. and def. giving notice of trial, and neither proceeding to trial, each paid costs.

The defendant gave notice of trial by proviso, and the plaintiff also gave notice of trial; neither went on to trial, or countermanded, and both got rules for costs for not going on to trial; the prothonotary doubted whether both

both were intitled to costs, and the judges were of opinion, that as both sides gave notice of trial, and neither proceeded to trial, each side was intitled to costs. *Reading* v. *Grafton, M.* 13 *Geo.* 1. *Pract. Reg.* 405.

Countermand at the assizes.

No countermand of trial at the assizes shall be good unless notice be given two days before the commission-day. *Mich.* 5 *Geo.* 1. The commission-day on a *Monday*, a countermand on the *Saturday* held to be regular. See *Barnes* 305.

In London *and* Middlesex.

And in *London* or *Middlesex* the countermand must be two days before the sitting for which notice was given. See *Barnes* 298. *Antea, fol.*

Counterm after record made a Remanet.

Notice of trial may be countermanded after the record is made a (*a*) *Remanet.*

Costs of a former assizes, when a cause is made a *Remanet*, not allowed, unless by consent of parties expressed in a rule or order entered into for that purpose. *Barnes* 150, 153.

Where cause goes off by consent on withdrawing a juror, and reference to arbitrators, and no award being made, cause is again brought on to trial; the costs of the first, shall attend the event of the second trial, as well in this case as that of a *Remanet.* Rule of *H.* term, 8 *Geo.* III.

(*a*) That is to say, *remains* untried without any fault of the parties, and is therefore on the front of the paper of causes for the next sitting. *Rayn.* Read on *stat.* 2 *Geo.* II. chap. 23, 4*to. p.* 127, in notes.

Costs for the future are to be allowed when a cause goes off, and *remains* to be tried, for want of jurors. 2 *Wilf.* 366.

When on default of the plaintiff's going to trial the court shall give judgment of nonsuit.

Where issue is or shall be joined, and the plaintiff hath neglected or shall neglect to bring such issue on to be tried, according to the course and practice of the court, it shall be lawful for the judges at (*b*) any time after such neglect, upon motion made in open court (due notice having been given thereof) to give the like judgment for the defendant as in cases of nonsuit, unless the judges shall upon just cause and reasonable terms allow any further time or times for the trial of such issue. And if the plaintiff shall (*c*) neglect to try such issue within the time or times so allowed; then and in every such case the judges shall proceed to give such judgment as aforesaid. *Stat.* 14 *Geo.* 2. *c.* 17. *f.* 1.

Of obtaining judgment, as in case of a nonsuit, for not proceeding to trial, in due time.

If plaintiff doth not proceed to try his cause in due time, defendant is intitled to judgment as in case of a nonsuit, by virtue of the above statute; in order to obtain which, a rule must in the first place be given for plaintiff to enter the issue on record, (which is a four day rule, exclusive of the day of service) if he fails in this, defendant may

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(*b*) The court was of opinion, that defendant ought to apply for judgment on this act, the very next term after default; *Barnes* 314. See *Id.* 318. but I conceive as the act is general, *any time after such neglect*, no court of justice can limit the time of application.

(*c*) This statute is founded on neglect. *Barnes* 315.

have

have the like judgment, as in case of a (*d*) nonsuit.

When the roll is brought in, either in pursuance of a rule or without, it will be necessary to give the officer (*e*) of the court, in whose custody the roll or record is, notice to produce the same; notice also must be given of the (*f*) motion, and there must be an affidavit of the state of the proceedings, of plaintiff's default in trying the (*g*) cause; and also of the service of the notice of motion; upon reading of which affidavits, and of the entry of the issue on record (*h*); court will make a rule for plaintiff to shew cause, why the like judgment should not be given for the defendant, as in the case of a nonsuit; which, upon no sufficient cause being shewn, will be ordered accordingly.

(*d*) *Barnes* 313.

(*e*) Viz. The clerk of the jurats, or the under clerk of the Treasury, Mr. *George Stubbs*, who resides near Old Palace Yard *Westminster*, and is Treasury-keeper, and as he lives so near the repository of the rolls of this court, the same being under the *Exchequer*, on the right hand, as you enter *Westminster* Hall Gate, from Old Palace Yard, you may meet with him or his clerk almost any hour in term time.

(*f*) But not a terms notice in any case. *Barnes* 308.

(*g*) Objection, by plaintiff's council, that, in order to support a motion on this act, there ought to have been an affidavit, *that the cause was not tried*; and it was allowed, and rule *Nisi* discharged. *Barnes* 316 This affidavit must not be sworn before plaintiff's attorney. *Barnes* 313.

(*h*) *Barnes* 313.

Causes held sufficient, by the court, to prevent a nonsuit on this act of parliament.

1. Plaintiff's own illness. *Barnes* 313.

2. That plaintiff's attorney died by the hand of God. *Barnes* 315.

3. That defendant, by some act of his, hindered the trial of the cause. *Barnes* 315, 498. See *Id.* 443.

4. Plaintiff's marriage, for thereby the suit is abated *de facto*. *Barnes* 314.

5. Plaintiff's witnesses being disabled with the gout. *Barnes* 316.

When a further time is granted, the court appoints a time for the trial, as at the next assizes, or at some sitting in *London* or *Middlesex*, according as where the action is to be tried. *Barnes* 313. If the defendant applies for costs for not going to trial, pursuant to notice, he has made his election, and cannot move for judgment, as in case of a nonsuit. *Barnes* 131, 314, 315, 316. Though further time for going to trial hath been given, yet upon reasonable cause it may still be enlarged, notwithstanding the word (*i*) *peremptory* in the rule. Such judgment may be given in an action *Qui tam*, &c. or replevin. *Barnes* 315, 316, 318. Where the excuse for not proceeding to trial, according to the rules of the court, is a sufficient excuse, the court, on

(*i*) The word *peremptory* in the rule doth not preclude the court from a further enlargement of the time, if they think it reasonable; it is wrong to insert the word *peremptory*, for the second excuse may be better than the first. *Barnes* 315.

giving

giving further time, will not make the plaintiff pay the costs of the application, but only the costs for not proceeding to trial. *Barnes* 316, 317, 318.

For trial at sittings after term, no Ne recipiatur till after proclamation.

You cannot, on notice of trial for the sittings after term, enter a *Ne recipiatur* till after proclamation made for bringing the records in.

Motion to put off a trial wh.n.

Motion to put off a trial, for that a material witness is out of the way, and cannot be had at the trial, must be made at least two days before the day for which the notice of trial was given. *Rep & Cas. of Pract. C. P.* 9[illegible], 105, 150. *Pract. Reg. C. P.* 399, 400. *Barnes* 437, 440, 442, 444.

Not to be granted if the witness was in the way when notice of trial given.

But if it appears that this witness, who is sworn to be a material witness, went out of town or abroad beyond sea after the notice of trial was given, the court will not put off the trial for it; the defendant might have subpoena'd him in time. *Barnes* 437.

Party applying for a special jury to pay the whole expence;

The person, or party, who shall apply for a special jury, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all the expences occasioned by the trial of the cause by such special jury;

and not allowed more than for a common jury.

and shall not have any farther or other allowance for the same, upon taxations of costs, than such person or party would be intitled unto, in case the cause had been tried by a common jury;

Unless, &c.

unless the judge, before whom the cause is tried, shall, immediately after the trial, certify in open court under his hand, upon the back of the record, that the

 same

ſame was a cauſe proper to be tried by a ſpecial jury. *Stat* 24 *Geo.* 2. *c.* 18.

What allowance to ſuch jury for ſerving.

No perſon who ſhall ſerve upon a ſpecial jury, or be returned, ſhall be allowed or take for ſuch ſerving on any ſuch jury, more than the judge who tries the cauſe ſhall think juſt and reaſonable, not exceeding 1 *l.* 1 *s.* except in cauſes wherein a view hath been directed *Same ſtat.*

Venire *on a penal ſtat. to be* de corpore com'.

Every *Venire* for the trial of any iſſue in any action or information, upon any penal ſtatute, ſhall be awarded of the body of the proper county where ſuch iſſue is triable. *Same ſtat.*

On trials at bar, plt.'s attorney to give notice of the day to chief prothonotary.

On trials at bar, which are to be moved for, the plaintiff's attorney muſt before the eſſoin-day of the term, in which the cauſe is appointed to be tried, give notice to the chief prothonotary or his ſecondary, of the day on which ſuch cauſe is to be tried, that the ſame may be put down in the court-book; and in caſe of neglect, and without motion and ſpecial direction of the court, ſuch cauſe ſhall not be tried that term. *Hil.* 9 *Ann.*

On trials at bar, judges to have copies of the iſſues 4 days before trial.

On trials at bar, the lord chief juſtice and the other judges are to have copies of the iſſues in ſuch cauſes delivered to them four days before the time appointed for trial. *Mich.* 3 *Geo.* 2.

Clerks of aſſize and aſſociate to return Poſtea's.

Every clerk of aſſize, and the aſſociate to the lord chief juſtice, ſhall make returns of *Poſtea's* upon records iſſuing out of this court, whereupon any proceedings have been by virtue of any writ of *Niſi prius*, *Diſtringas*, or *Habeas corpora juratorum*, and cauſe the ſame

to be delivered to the reſpective prothonotaries, upon the *Quarto die poſt* of the return of the writ of *Niſi prius* in bank, under the penalty of 20 *l.* And, that all excuſes may be taken away, the reſpective clerks of aſſize and aſſociate at the trial ſhall take the fees due to them reſpectively for the return of every ſuch *poſtea*. *Paſch.* 2 *Jac.* 2.

After the trial is over, and the record is returned with the *poſtea* ingroſſed, you get the *poſtea* ſtamped with a double half-crown ſtamp, and apply to the prothonotary to tax your coſts, and then deliver the record and *poſtea* to the clerk of the judgments, who continues the ſame on the roll, and awards judgment.

Poſtea *to be left with clerk of the judgments.*

Where final judgment ſhall be ſigned upon a *poſtea*, the *poſtea* ſhall immediately be left with the clerk of the judgments of the prothonotary, and ſhall not afterwards be taken out of the office without leave of the court. *Trin.* 13 *Geo.* 2.

Of ſpecial verdicts.

In caſe a ſpecial verdict be found, the plaintiff's attorney muſt enter the proceedings to the end of the ſpecial verdict on record, and deliver it to the ſecondary in court, and get a ſerjeant to move for a *Concilium*, or day for argument, then draw up the rule, and ſerve it on the defendant's attorney.

Paper-books on ſpecial verdicts or demurrers how to be delivered.

In cauſes entered in the court-book for argument at the bar on ſpecial verdicts or demurrers, the attornies concerned in the cauſe ſhall deliver true copies of the record to the reſpective juſtices of the court, by the ſpace of one week at leaſt next before the day appointed

pointed for ſuch argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief juſtice, and another to the ſenior judge; and the attorney for the defendant like copies to each of the other two juſtices. *Paſch.* 27 *Car.* 2.

No argument till books delivered.

No arguments by counſel on either ſide ſhall be heard at the bar, until books be delivered to all the judges. *Same rule.*

If either neglect, the other ſide may deliver all the books.

In caſe the attorney of either party ſhall not deliver books as he ought; then if the attorney on the other ſide, for expediting his client's cauſe, will deliver books to all the judges three days at the leaſt before the argument, counſel ſhall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforeſaid ſhall be reimburſed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverſe party, which charges the ſaid attorney ſhall be bound to pay upon the demand thereof. *Same rule.*

And be reimburſed by the attorney making default.

If not paid before judgment, to be allowed in coſts.

If the charges of delivering the ſaid two books ſhall not be paid before judgment ſhall be given in the cauſe, the charges of delivering the ſaid books ſhall be allowed upon taxing coſts, and in that caſe the attorney ſhall not be compelled to pay the ſaid coſts; but if no coſts are to be taxed in the caſe, then the attorney making default in delivering of the books as aforeſaid, ſhall be compelled to pay the charges of the copies ſo delivered by the attorney of the adverſe party, by attachment or otherwiſe, as the court ſhall think fit. *Same rule, vide poſtea.*

If no coſts, attachment againſt attorney making default.

A motion in arrest of judgment must be made within the first four days, *i. e.* before, or on the appearance day of the return of the *Habeas corpora juratorum. Barnes* 445.

Motion in arrest of judgment, when.

If the motion be on the last day of term, the party, who moves an arrest of judgment, must produce an affidavit, that he has given notice of his motion to the other side.

Notice, if on the last day of term.

After a motion in arrest of judgment the party can't move to set aside the verdict, unless it be upon a matter disclosed after the motion in arrest of judgment, and the motion to set aside the verdict be made before judgment pronounced. See *Barnes* 441, 443.

Not after motion to set aside verdict; unless, &c.

Verdicts have been frequently set aside for excessive damages, but never for smallness of damages; but see *Barnes* 448, 455.

Verdict set aside for excessive damages.

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas corpora juratorum*, unless the foundation of the motion be some matter discovered afterwards.

Motion for new trial,

Where the issue lay on the defendant, as *Solvit ad diem*, *Son assault*, &c. and the defendant's witnesses have been examined, the court seldom grants a new trial.

Seldom, when issue lay on defendant.

In ejectment, where a verdict is for the defendant, it is not usual to grant a new trial, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the consequence of not granting a new trial is the alteration of the possession of the premisses. See *Barnes* 440.

Seldom in ejectment, if verdict pro D. aliter *if* pro Q.

When

When final judgment is obtained, the party is to proceed to execution; of which see hereafter.

As we spoke of issues triable by juries, we shall say something of issues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record.*

Of demurrers.

General demurrer to a declaration.

AND the said *W.* by *A. R.* his attorney cometh and defendeth the force and injury, when, *&c.* and saith, that the said declaration in form aforesaid made and declared, and the matter therein contained, are not sufficient in the law for the said *S.* to have or maintain his said action against him the said *W.* and that he the said *W.* hath no need, nor is he obliged by the law of the land to answer the said declaration in manner and form aforesaid made and declared: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *W.* prayeth judgment, and that the said *S.* may be barred from having his said action against him the said *W.* &c.

Joinder.

And the said *S.* inasmuch as he hath above declared sufficient matter in the law to have and maintain his said action against the said *W.* which he is ready to verify; which said matter the said *W.* hath not denied, or given any answer thereto, but intirely refuseth to admit the verifying the same; the said *S.* prayeth judgment, and his damages by occasion

casion of the premisses to be adjudged to him, &c.

Concilium.

And because the justices here will advise themselves of and upon the premisses before they give their judgment thereon, day is given to the said parties here from the day of St. *Martin* in fifteen days to hear their judgment, for that the said justices here are not yet advised thereof, &c.

3 Lev. 130. *Special demurrer to a writ and declaration, at the suit of any attorney. Oyer of the writ.*

And the said *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury, when, &c. and craveth oyer of the said writ of our lord the king of privilege; and it is read to him in these words, *to wit*, *George* the second, &c. [setting forth the whole writ *in hæc verba.*], Witness Sir *Robert Eyre*, knight, at *Westminster*, the third day of *July*, &c. which being read and heard, the said *W.* prayeth judgment of the said writ and declaration aforesaid of him the said *W.* because he saith, that the said writ, and the declaration thereupon aforesaid, in manner and form aforesaid made and declared, and the matter in them contained, are not sufficient in the law for the said *W.* to have and maintain his action aforesaid against him the said *R.* to which said writ and declaration in manner and form aforesaid made and declared he had no need, nor is he by the law of the land held or obliged, in any manner to answer; And this he is ready to verify; wherefore, and for want of a sufficient writ and declaration in this behalf, the said *R.* prayeth judgment, and that the said *W.* from his action aforesaid may be debarred, &c. and for causes of demurrer

murrer in law in this behalf he the said *R.* according to the form of the statute in such like cases made and provided, sheweth to the court these following; that is to say, for this, that it appeareth to this court, that the same writ of our said lord the king of privilege was had and sued out upon the third day of *July* in the eighth year of the reign of our said lord the king, which day of suing out thereof was before the day on which the said *W.* has in his said declaration thereupon alledged and declared, that the said trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said *R.* in and by the said declaration, were done and committed; and also for this, that between the writ and declaration are diverse variances; and also for this, that the said declaration in form aforesaid made and declared is in itself repugnant, insensible, contradictory, and wanteth form, and so forth; and hereupon the said *R. D.* demandeth the aforesaid *W. O.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here, to the said *W.* before his majesty's justices at *Westminster*, until next after to join in the demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but he made default: Therefore it is considered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, to wit, *J. D.* and

Writ tested before the cause of action.

Variance, &c.

Day for plaintiff to join in demurrer.

Plaintiff makes default

Judgment against the plaintiff.

R. R.

R. R. be thereof in mercy, *&c.* and that the said *R.* do go thereof without day, *&c.* And further it is considered by the court here, that the said *R.* recover against the said *W.* 3 *l.* 16 *s.* 8 *d.* for his expences and costs by him about his defence in this part sustained, to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, *&c.* and that the said *R.* have his execution for the same, *&c.*

General demurrer to a plea.

And the said *C.* saith, that the aforesaid plea of the said *F.* above pleaded in bar, is not sufficient in law to bar him the said *C.* from his said action against the said *F.* and that he the said *C.* hath no need, nor is bound by the law of the land, to answer to the said plea in manner and form aforesaid pleaded; and this he is ready to verify: Wherefore for default of a sufficient plea in this behalf the said *C.* prayeth his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, *&c.*

Joinder.

And the said *F.* for that he hath above alledged sufficient matter in law to bar the said *C.* from having his said action against him the said *F.* which he is ready to verify, which said matter the said *C.* hath not denied, nor any ways answered thereunto, but wholly refuseth to admit the verification thereof, prayeth judgment, and that the said *C.* may be barred from having his said action, *&c.* And because the justices, *&c.*

Demurrer to declaration for not alledging

And the said *J. S.* and *M.* by *C. B.* their attorney, come and defend the force and injury,

that administration was granted to defendant.

injury, when, &c. and pray judgment of the said declaration: Because they say, that the said declaration and the matter therein contained are not sufficient in law to maintain the action of the said *D.* against them the said *J. S.* and *M.* to which said declaration the said *J. S.* and *M.* have no need, nor are they obliged by the law of the land to answer; and this they are ready to verify: Wherefore for want of a sufficient declaration in this case, the said *J. S.* and *M.* pray judgment of the said declaration, and that the same may be quashed, &c. And the said *J. S.* and *M.* according to the statute shew the causes of demurrer following, *to wit*, that it is not alledged in the said declaration how, or by whom letters of administration were granted; nor is it alledged that administration was ever granted to the said *J. S.* and *M.* And also that the said declaration is uncertain and wanteth form.

Special demurrer to a plea of Nil debet *to a bail bond.*

And the said *E. H.* saith, that the said plea of him the said *F. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *F.* and that he the said *E.* hath no need, nor is he obliged by the law of the land to answer the said plea of him the said *F.* in manner and form aforesaid above pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf the said *E.* prayeth judgment, and that his said debt, together with his damages by reason of the detaining of that debt, may be adjudged to him,

him, &c.' And for causes of demurrer in Law in this behalf, the said *E.* according to the form of the statute in such cases made and provided, sheweth to the court here these causes following; (that is to say) for this, that the said *F. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *F.* is estopped by the said deed to say, that he doth not owe the money in the said deed mentioned, and ought to have shewn by his plea how he is discharged from the same.

Causes of demurrer.

And the said *F. S.* saith, that the said plea by him the said *F.* in manner and form aforesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *F.* which said plea, and the matter therein contained, he the said *F.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *F.* doth pray judgment, and that the said *E.* may be barred from having against him the said *F.* his action aforesaid, &c.

Joinder.

Judic. pro Q.

And the said *A.* saith, that the said plea of the said *J.* above by replying pleaded, and the matter therein contained, are not sufficient in the law for the said *J.* to have and maintain his said action against him the said *A.* and that he hath no need, nor is he obliged by the law of the land to answer to the said plea in manner and form aforesaid pleaded; and

Demurrer to a replication.

this he is ready to verify: Wherefore for defect of a sufficient plea in this behalf the said *A.* prayeth judgment, and that the said *J.* may be barred from having his said action against him the said *A.* &c.

Joinder. And the said *J.* for that he has above by replying alledged sufficient matter in the law, for him the said *J.* to have and maintain his said action against the said *A.* which the said *J.* is ready to verify; which matter the said *A.* doth not deny, nor any ways answer thereto, but intirely refuseth to admit the verifying thereof; the said *J.* as before prayeth judgment, and his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, *&c.* And because, *&c.*

Demurrer to a rejoinder. And the said *J.* saith, that the said plea of the said *M.* above by rejoining pleaded, and the matter therein contained, are not sufficient in the law to bar the said *J.* from having his said action against the said *T.* And that he hath not need, nor is obliged by the law of the land to answer to the said plea in manner and form aforesaid pleaded; and this he is ready to verify: Wherefore the said *J.* as before, prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, *&c.*

Joinder. And the said *T.* for that the matter aforesaid by him above by rejoining alledged (which he is ready to verify) is sufficient in the law to bar the said *J.* from having his said action against him the said *T.* which said matter

ter the said *J.* hath not denied, nor any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the same *J.* may be barred from having his said action against him, &c.

3 Lev. 187.

Of going to argument on demurrer.

When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on treble penny paper to the defendant's attorney, who must pay him for it after the rate of 4 *d. per* sheet, besides the duty, and also for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the secondary gets a serjeant to move for a *Concilium*, or day for arguing the demurrer, and the secondary draws up a rule accordingly, which must be served on the defendant's attorney, and the demurrer put down in the book for argument. It will be irregular to move for a *Concilium* before the paper book is delivered to defendant's attorney; and for this irregularity, court ordered cause to be struck out of paper. *Barnes* 163.

As to delivering the paper books, *vide antea* fol. *Rule, Pas.* 27 *Car.* 2.

As to delivering the paper books.

The plaintiff's attorney shall deliver all the demurrer books to the lord chief justice and the rest of the judges, and the defendant's attorney shall pay the plaintiff's attorney for two of the said books two days at least before the day appointed for arguing such demurrer

and the defendant shall not be heard by his counsel when the cause comes on to be argued, unless the said two books be accordingly paid for. *Mich.* 6 *Geo.* 2.

Where in cases of demurrer deft.'s attorney obliged to accept notice of inquiry.

Where the defendant demurs to the declaration, his attorney shall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads such a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry on the back of such demurrer. *Trin.* 10 *Geo.* 1.

In judges books counsels names, number roll, and day of argument to be set down.

Per Curiam: For the future in all demurrer books delivered to the judges, let the counsels names be inserted who signed the pleadings, and let the number roll, and day of argument be set down on the outside of each book. *Trin.* 17 & 18 *Geo.* 2. *Barnes* 164.

Proceedings on issues upon Nul tiel record.

Declaration in debt on a judgment.

London, *to wit*, R. D. late of *London*, carpenter, was summoned to answer unto *L. P.* of a plea, that he render to him 62*l.* of lawful money of *Great Britain*, which he oweth him and unjustly detaineth, &c. and whereupon the said *L.* by *J. C.* his attorney saith, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the fourth year

year of the reign of his present majesty king *George* the second, in his said majesty's court, before Sir *Robert Eyre*, knight, and his brethren, then his majesty's justices of the bench here, at *Westminster* in the county of *Middlesex*, by the consideration of the said court recovered against the said *R.* 62*l.* which were adjudged to the said *L.* in the said court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said *L.* by the said *R.* then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof now remaining in his majesty's said court here more fully and at large appeareth, which said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied; and the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62*l.* yet the said *R.* although often requested, hath not rendered the said 62*l.* or any part thereof to the said *L.* but to render the same to him hitherto hath denied, and still doth wholly deny, to the damage of the said *L.* 20*l.* And thereof he bringeth suit, &c.

Plea Nul tiel record.

And the said *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *L.* ought not to have his said action against him, because he saith, that there is not any such record

cord of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court, before Sir *Robert Eyre*, knt. and his brethren, his majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, &c.

Replication.

And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith, that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record, and he prayeth, that the ſaid record may be inſpected and ſeen by the juſtices here, &c. And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the ſaid record here on   The ſame day is given to the ſaid *R.* here, &c.

Rule for judgment on bringing record into court.

On bringing the record into court on the day given, the ſecondary of courſe draws up a rule for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of the rule that no cauſe hath been ſhewn, after which judgment may be ſigned.

Judgment.

The clerk of the judgments enters up the judgment.

The

The plaintiff must bring in the record at the day he has given himself, or the court will not receive it.

Recovery in a former action pleaded in bar.

And the aforesaid *T.* by *J. D.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *T.* ought not to have or maintain his said action against him, because he saith, that [illegible] making the several promises and assumptions in the said declaration mentioned, and before the day of obtaining the original writ of the said *T. to wit*, in the term of St. *Michael* in the present —— year of the reign of the now king before Sir *R[illegible]*, knight, and his companions, justices of our lord the king of the bench at *Westminster*, by bill, without the writ of the same king, and by the consideration of the said court, recovered against the same *J.* [illegible] *l.* for his damages which he had sustained as well [illegible] of the not performing the several [illegible] assumptions in the said declaration [illegible], as for his costs and charges [illegible] he had about his suit in that behalf [illegible] expended, as by the record and proceedings [illegible] the said court of our said lord the king of the bench at *Westminster* fully appears. And the said *J.* averreth, that the promises and assumptions in the said record mentioned, and the promises and assumptions in the said declaration above mentioned, are the same promises and assumptions, and not other or different; and this the said *J.* is ready to verify: Whereupon he prayeth judgment, if the said *T.*

 ought

ought to have or maintain his said action against him, *&c.*

Replication, Nul tiel record.

And the aforesaid *T.* saith, that he by any thing alledged by the said *J.* in the above pleading ought not to be precluded from having his action aforesaid against the said *J.* because he saith, that there is not any such record of the said recovery against the said *J.* at the suit of the said *T.* as he the said *J.* above in pleading hath alledged; and this he is ready to verify: Whereupon he prayeth judgment, and that his said damages may be adjudged to him, *&c.*

Rejoinder.

And the aforesaid *J.* saith, that there is a record of the said judgment as the said *J.* above in pleading hath alledged; and this he is ready to verify by the said record, and prayeth, that the said record may be seen and inspected by the justices here. And because the said record is not now had here, it is commanded the said *J.* that he have here the said record in (*the day*) at his peril. The same day is given as well to the said *T.* as to the said *J.* here, *&c.* At which day come here as well the said *T.* as the said *J.* by their said attornies, and the said *J.* hath not here the said record, but maketh default; whereby it sufficiently appeareth to the said justices here, that there is not any such record of the said recovery, as the said *J.* hath above alledged; Wherefore, *&c.* (*Judgment.*)

Day given to produce the record.

Def. fails in producing the record.

Q. If there was not here a complete issue upon the replication, and the rejoinder unnecessary.

And

And the said *T.* by *F. K.* his attorney cometh and defendeth the force and injury, when, *&c.* and saith, that the said *J.* ought not to have his aforesaid action against him the said *T.* thereon, because he saith, that one *C. T.* heretofore (that is to say) in *Easter* term in the fifth year of the reign of his present majesty, by an original writ impleaded the said *J.* by the name of *J. H.* late of *London*, gent. in the court of the said now king, before the king himself (the said court then and still being at *Westminster* in the county of *Middlesex*) in a plea of trespass; and the said *J.* because he did not appear in his said majesty's court before the said king, to answer unto the said *C.* in the aforesaid plea, according to the law and custom of this realm, was put in exigent to be outlawed in *London*; and for that reason afterwards, *to wit*, on *Monday* next before the feast of the purification of the blessed virgin *Mary* in the sixth year of the reign of his present majesty, in the said court of our said lord the now king before the said king himself, was outlawed in due form of law at the suit of the said *C.* in the said plea, and still remaineth outlawed, as by the record and proceedings thereof in his said majesty's court, before the king himself at *Westminster* aforesaid returned, and now there remaining, may more fully appear; and this he is ready to verify by the said record: Wherefore he prayeth judgment, whether the said *J.* ought to have his said action therefore against him.

That the plt. is outlawed in another court.

And

Replication, Nul tiel record.

And the said *J.* saith, that he, by any thing by the said *T.* in his plea above alledged, ought not to be barred from having his said action against him, because he saith, that there is not any such record of outlawry in his said majesty's court before the king himself, as the said *T.* by his said plea hath alledged; and this he is ready to verify in such manner as the court shall award. And the said *T.* is commanded that he have the said record here on the morrow of the ascension of our Lord at his peril; and the same day is given to the said *J.* here, &c. At which day here come as well the said *J.* as the said *T.* by their attornies aforesaid; and the *T.* hath not here the said record, but maketh default thereof: Wherefore, &c.

Day given to produce the record.

Deft makes default.

Notice of inquiry on issue of Nul tiel record.

Upon an issue of *Nul tiel record*, notice of executing a writ of inquiry may be given upon the issue-book, as well as upon a joinder in demurrer. *Long* against *Longwood*, *Hil.* 8 *Geo.* 2. *Barnes* 239. *Pract. Reg. C. B.* 443.

When a four day rule on issue of Nul tiel record *is necessary.*

Where the judgment upon an issue of *Nul tiel record* is final, the rule should be, unless cause within four days, that the defendant may have that time to move in arrest of judgment; but where the judgment is interlocutory, that reason fails, and a two day rule hath been held sufficient, because the defendant may move in arrest of judgment after the inquiry executed. Where the proceeding is by original, and a general return day is given to bring in the record, the defendant ought to be called to bring in the record at the rising of the court on that day, and if he

Difference where proceedings by original, and by bill.

he fail, the rule for judgment ſhould be, unleſs cauſe on the appearance day of that return, and the record may be brought in on that day or any other intervening day. But where the proceedings are by bill againſt an attorney, and the day given to bring in the record is a day certain, the record cannot be brought in after that day; but on that day, at the riſing of the court, the defendant ought to be called to bring in the record, and if he fail, the court will appoint the day to be inſerted in the rule for judgment *Niſi cauſa*.

Rule to ſhew cauſe why defendant ſhould not *reply* to ſeveral matters to a plea in bar to an avowry, diſcharged; becauſe no inſtance can be ſhewn of ſeveral matters replied ſince *ſtat.* 4 *An. chap.* 16. for though the words of the ſtatute are, to plead as many matters, &c. and *Replications*, rejoinders, &c. are properly pleadings, yet the courts of *Weſtminſter* have never carried their leave further than as afore mentioned. *Barnes* 364.

Of judgments by default.

Of entering judgment by default.

IF the defendant does not plead by the time limited by the rules of the court (for which ſee before, *ſol.* &c.) the plaintiff may ſign his judgment with the prothonotary, in whoſe office the proceedings are entered. In debt the judgment is final, and ſigned on a double half-crown ſtamp; but in treſpaſs, treſpaſs on the caſe, &c. the firſt judgment is only interlocutory, and not final, till

till the inquiry is returned, when you get the inquisition stamped with a double half-crown stamp, and then the prothonotary taxes your costs *de incremento*, which is called signing the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus:

Judgment in debt.

London, *to wit.* C. D. late of *London*, merchant, was attached to answer *A. B.* in a plea of trespass on the case; and whereupon, *&c. (to the end of the declaration)* And thereof he bringeth suit, *&c.*

Then beginning a new line, you enter the judgment in the following manner:

By Nil dicit.

And the said *C. D.* by *C. H.* his attorney cometh and defendeth the force and injury, when, *&c.* and saith nothing in bar or preclusion of the action of the said *A. B.* by which the said *A. B.* remaineth thereupon undefended against the said *C.* Therefore it is considered that the said *A.* recover against the said *C.* his said debt, and his damages by oc-

Judgment signed 5 May 1767.

Day of signing judgment to be set down.

By the statute 29 *Car.* 2. *c.* 3. *s.* 14. perpetuated by 1 *Jac.* 2 *c.* 17. *s.* 5. Any judge or officer of any of the courts at *Westminster*, who shall sign any judgment, shall at the time of signing it (without fee) set down the day and year of his so doing upon the paper-book, docket or record, which day and year shall be set down on the margin of the roll of the record where such judgment shall be entered.

casion of the detaining the said debt to 53 *s.* by the court here adjudged to the said *A. B.* by his assent. And the said *C.* in mercy, &c. *Mercy.*

And the said *B.* by *C. D.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he cannot deny the action of the said *E.* nor but that he oweth to the said *E.* the said 10 *l.* in manner and form as the said *E.* hath above declared against him: It is therefore considered that the said *E.* recover against the said *B.* his said debt, and his damages by occasion of the detaining that debt to 53 *s.* by the court here adjudged to the said *E.* by his assent; and the said *B.* in mercy, &c.

Cognovit actionem *in debt.*

Judgment signed day of 1767.

And the said *T.* by *L. R.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he cannot deny but that the said writing obligatory is the deed of him the said *T.* nor but that he oweth to the said *W.* the said 10 *l.* in manner and form as the said *W.* hath above declared against him: It is therefore considered, &c. *as before.*

Cognovit actionem *in debt on a bond.*

And the said *L.* by *T. S.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *L.* of any answer to be given for the said *L.* to the said *R.* in the plaint aforesaid; and he saith nothing else thereupon; by which the said *R.* remaineth thereupon undefended against the said *L.* It is therefore considered, &c.

Judgment by Non sum informatus.

And the said *C. D.* by *E. T.* his attorney cometh and defendeth the force and injury, when,

Nil dic't *in case.*

when, &c. and saith nothing in bar or preclusion of the action of the said G. by which the said G. remaineth thereupon undefended against the said C. For which the said E. ought to recover against the said C. his damages by occasion of the premisses. But because it is not known what damages the said G. hath sustained by occasion of the premisses, therefore it is commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said G. hath sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which he shall thereupon make he make appear to the justices of our lord the king at *Westminster*, on the morrow of the holy *Trinity*, under his seal, and the seals of them by whose oath he shall make the said inquisition. As to continuance *vide* 2 *Danv. Abr.* 153. *pl.* 7. *Yel.* 97. *Noy* 120. *Cro. Eliz.* 114, 774. 11 *Co.* 6. *b. Rol. Rep.* 30, 31. *Cro. Eliz.* 775. *Sid.* 16.

Inquiry awarded.

If the action be in case *Sur assumpsit*, instead of saying [*by occasion of the premisses*] say [*by occasion of the not performing the promises and undertakings aforesaid.*]

In trespass say, [*by occasion of the trespass aforesaid.*]

If in trespass and assault, say [*by occasion of the trespass and assault aforesaid.*]

If in trespass, assault and imprisonment, say [*by occasion of the trespass, assault and imprisonment aforesaid.*]

In

In covenant say [*by occasion of breaking the said covenant.*].

If the defendant, after having pleaded *per minas* or *per dures*, and issue taken thereon, is willing to confess the action, the entry of such confession is to be in this manner.

At which day here cometh as well the said *A.* as the said *B.* by their attornies aforesaid, and thereupon the said *B.* relinquishing his averment aforesaid above by him pretended saith, that he cannot deny the action of the said *A.* thereupon, nor but that he at the time of making the said writing was of his own right at large, and made the said writing to the said *A.* of his mere and free will, and not for fear of threatnings, as he the said *A.* hath above alledged: Therefore it is considered, &c. *as before.*

Relicta verificatione.

If the defendant confess the action after *Non est factum* pleaded, and issue joined, the entry is thus:

At which day here cometh as well the said *R.* as the said *S.* by their attornies aforesaid, and hereupon the said *S.* relinquishing his averment aforesaid above by him pretended, saith, that he cannot deny the said action of the said *R.* nor but that the said writing is the deed of him the said *S.* nor but that he oweth the said *R.* the said 100 *l.* in manner and form as the said *R.* above complaineth against him: Therefore it is considered, &c.

The like after **Non est factum** *pleaded.*

And the said *B. C.* by *D. E.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *B.* of any answer

Non sum informatus *in case.*

ſwer for the ſaid *B.* to be given to the ſaid *E.* in the plaint aforeſaid; for which the ſaid *E.* ought to recover his damages by occaſion of the premiſſes againſt the ſaid *B.* But becauſe it is unknown what damages the ſaid *E.* hath ſuſtained by occaſion of the premiſſes, it is commanded to the ſheriff, that by the oath of twelve good and lawful men of his bailiwic he diligently inquire what damages the ſaid *E.* hath ſuſtained as well by occaſion of the premiſſes, as for his coſts and charges by him about his ſuit in this behalf expended; and that the inquiſition which he ſhall thereupon take he make appear to the juſtices of our lord the king at *Weſtminſter*, in five weeks from the day of *Eaſter*, under his ſeal, and the ſeals of, *&c.*

Inquiry awarded.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, *fol.* 17.

No warrant to confeſs a judgment to be taken of a priſoner, unleſs an attorney on his behalf be preſent.

No bailiff or ſheriff's officer ſhall preſume to exact or take from any perſon, being in his cuſtody, any warrant to acknowledge a judgment but in the preſence of an attorney for the defendant, which attorney ſhall then ſubſcribe his name thereunto; which ſaid warrant ſhall be produced when the ſaid judgment ſhall be acknowledged. *Hil.* 14, 15. *Car.* 2.

No attorney ſhall enter or acknowledge, or cauſe to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arreſt, otherwiſe than is aforeſaid. *Same rule.*

But

But if the defendant be an attorney, or practises as such, 'tis sufficient, though no attorney on his behalf be present. *Rep. and Caf. of Pract. C. P.* 94. *Barnes* 37.

Aliter if defendant be an attorney.

It is not neceffary that a warrant of attorney to confess a judgment in this court given by a person in custody, be executed in the presence of an attorney of this court; if it be in the presence of an attorney of the court of *King's Bench* it is sufficient. *Barnes* 44.

Warrant to confess a judgment in the presence of an attorney of B. R. *is sufficient.*

Every warrant of attorney for confessing a judgment in this court shall be read over by the person who is to execute the same, or by some other person to him before the execution thereof; and if judgment shall be entered up upon any such warrant of attorney which shall not be so read over as aforesaid, such judgment upon any motion may be set aside as irregular. *Trin.* 14, 15 *Geo.* 2.

Warrant of attorney to confess a judgment to be read by or to the party.

If judgment on a warrant of attorney be not entered up within a year, the plaintiff must apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unsatisfied, and the defendant living. *Rep. and Caf. of Pract. C. P.* 69. *Barnes* 270.

On warrant of a year standing judgment can't be entered without leave of the court.

If a warrant of attorney to enter judgment be above a year old, and under ten years old, leave to enter judgment may be given by a treasury rule; but if the warrant be above ten years old, the court must be moved for leave to enter judgment. If the warrant be under twenty years old, the common affidavit of due execution of the warrant, that the debt is unpaid and the parties living, is suffi-

When by a treasury rule a judgment may be entered on an old warrant of attorney.

cient for an absolute rule. But if the warrant be above twenty years old, the rule must be to shew cause, and served on defendant. *Barnes* 41, 47. *Rep. and Cas. of Pract. C. P.* 146.

Leave granted to enter judgment on an old warrant of attorney in *Mich.* term, on affidavit, that defendant was living in *Ireland*, on 18 *Sept.* preceding, as a reasonable length of time for distance. *Barnes* 53, 54.

Of a special original to support the judgment.

If the plaintiff has judgment, and it be not upon a verdict, his attorney must make out a *Præcipe* for a special original returnable on the first return of that term, in which the judgment (or interlocutory judgment in case of a writ of inquiry) is entered.

The form of a Præcipe *for a special original in case.*

Præcipe *for a special original.*

Middlesex, *to wit.* IF *L. B.* shall give you security to prosecute his suit, then put by sureties and safe pledges *C. M.* late of *Westminster* in the county of *Middlesex*, esq; that he be before our justices at *Westminster* on the morrow of *All Souls*, to shew,

Indebitatus assumpsit *for the use of horses, coach, &c. and attendance of servants.*

That whereas the said *C.* on the 25th day of *September* in the year of our Lord 1766, at *Westminster* in the said county of *Middlesex*, was indebted to the said *L.* in the sum of 200 *l.* of lawful money of *Great Britain*, for the hire of divers horses, mares and geldings of him the said *L.* and for the labour and attendance of diverse of his servants, and also

for the use of diverse of his coaches and chariots by him the said *C.* at his special instance and request before that time used, hired and had, and being so indebted, and the said *C.* in consideration thereof afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, took upon himself, and to the said *L.* then and there faithfully promised, that he the said *C.* would well and truly pay the said 200 *l.* to him the said *L.* when he the said *C.* should be afterwards thereunto requested. *And also whereas* the said *C.* afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, in consideration that the said *L.* had before that time, at the like special instance and request of him the said *C.* let to hire to him the said *C.* diverse other horses, mares and geldings, and diverse other coaches and chariots of him the said *L.* and had also at the like special instance and request of the said *C.* before that time by diverse of his servants done and performed for him the said *C.* diverse other labours and attendances, took upon himself, and to the said *L.* then and there faithfully promised, that he the said *C.* would well and truly pay to the said *L.* so much money, as he the said *L.* had reasonably deserved to have for the same, when he the said *C.* should be afterwards thereunto requested. And he the said *L.* doth aver, that he the said *L.* reasonably deserved to have for the same the further sum of 200 *l.* of like lawful money, *to wit*, at *Westminster*

Quantum meruit *therein*.

aforesaid in the county aforesaid, whereof the said *C.* afterwards, that is to say, on the same day and year aforesaid there had notice. *And also whereas* the said *C.* afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, had accounted with him the said *L.* touching and concerning diverse other sums of money by him the said *C.* to him the said *L.* then due and in arrear, and unpaid; and upon that account he the said *C.* was found in arrear to him the said *L.* in the sum of 132 *l.* 7 *s.* of like lawful money, and being so found in arrear he the said *C.* in consideration thereof afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, took upon himself, and to him the said *L.* then and there faithfully promised that he the said *C.* would well and truly pay the said 132 *l.* 7 *s.* to the said *L.* when he the said *C.* should be afterwards thereunto requested: *Nevertheless* the said *C.* in no wise regarding his said several promises and undertakings so made by him as aforesaid, but contriving and fraudulently intending him the said *L.* in this behalf craftily and subtilly to deceive and defraud, hath not paid to him the said several sums of money, or any of them or any part thereof (although to pay the same to him the said *L.* he the said *C.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, was requested by the said *L.*) but the said *C.* to pay the same to him hath hitherto altogether refused, and

Insimul computasset.

Breach.

still

ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 200*l.* as he ſaith,

R. R. *Returnable on the morrow of All Souls.*

This *Præcipe* muſt be carried to the curſitor of the county in which the action is laid, on or before the eſſoin-day of the ſubſequent term, purſuant to the following order.

Original to be beſpoke on or before the eſſoin day of the ſucceeding term.

No curſitor ſhall make, or permit to be made, within his reſpective office and diviſion, any original writs whatſoever of any return paſt, unleſs he ſhall receive the inſtructions for making thereof within the term wherein the ſaid writs are to be returnable, or at fartheſt *on or before* the eſſoin-day of the next ſucceeding term, without ſpecial warrant from the lord chancellor or lord keeper of the great ſeal of *England*, or maſter of the rolls for the time being. *Lord* Clarendon's *orders in chancery.*

Fine to the king.

If the debt demanded, or damages laid, exceed 40*l.* the plaintiff pays a fine to the king in proportion to ſuch debt or damages, as follows:

	l.	*s.*	*d.*
From 40*l.* to 100 marks ——	0	6	8
From 100 marks to 100*l.* ——	0	10	0
From 100*l.* to 200 marks ——	0	13	4
From 133*l.* 6*s.* 8*d.* to 166*l.* 13*s.* 4*d.*	0	16	8
From 166*l.* 13*s.* 4*d.* to 200*l.* —	1	0	0
And for every 100 marks more	0	6	8
And for every 100*l.* more ——	0	10	0

 When

Of returning the original.

When the curſitor has made out the original, the plaintiff's attorney returns it of courſe thus;

Pledges to proſecute { *John Doe*, *Richard Roe*.

The within named *C. M*, hath nothing in any bailiwic whereby he can be* attached,

The anſwer of

Robert Darling, Eſq; } Sheriff.
James Eſdail, Eſq; }

And then he files it with the *Cuſtos brevium*.

Warrant of attorney.

He muſt alſo file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney.

Of writs of inquiry.

Notice of executing writ of inquiry.

WHEN you have ſigned your interlocutory judgment, you are to give the defendant notice of executing the writ of inquiry; and in ſome inſtances you may give notice of executing the writ of inquiry before you have ſigned interlocutory judgment, as in caſes of demurrers and iſſues on *Nul tiel record*, as appears *fol.* 228.

Where 8 days notice of executing writ of inquiry in London *or* Middleſex.

In *London* or *Middleſex* (the defendant dwelling within forty miles of *London*) there muſt be eight days notice given of executing a writ of inquiry, excluſive of the day whereon the notice is given. *Mich.* 1654.

Where fourteen days.

But if the defendant lives above forty miles from *London*, and the inquiry is to be execu-

* *Vide antea fol.* 125-6. the difference between attached and ſummoned.

ted

ted in *London* or *Middlesex*, there must be fourteen days notice, exclusive of the day of the notice. *Same rule.* This rule holds good although the defendant be an attorney of the court. *Barnes* 265. and notwithstanding *Stat.* 14 *Geo.* 2. chap. 17. See *ante* 196.

Eight days notice in the country.

And eight days notice, exclusive of the day of the notice, must be given of executing writs of inquiry in the country. *Same rule.*

Where a term's notice.

If there have been no proceedings for twelve months after judgment, there must be a term's notice given of executing a writ inquiry of damages; and such notice must be given before the essoin-day of the term. *Vide antea fol.* 197. *Rule, Pas.* 13 *Geo.* 2.

Where plaintiff concludes ad patriam, *gives notice of trial, and defendant don't join issue, notice of inquiry to be from the time notice of trial was given.*

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of his pleading (pursuant to the rule of *Trinity* 2 *Geo.* 1. *antea fol.* 197.) if the defendant does not join issue on such pleading before the rule is out, the defendant's attorney shall, after judgment obtained, be obliged to accept notice of executing a writ of inquiry from the time that the notice of trial was given on the back of such pleading, as aforesaid. *Hilary* 6 *Geo.* 1.

Where notice of inquiry may be given on demurrer or joinder in demurrer. And on issue of Nul tiel record.

Videa antea fol. 227. Where defendant shall be obliged to accept notice of executing a writ of inquiry on the back of a joinder in demurrer or demurrer; and *fol.* 234. where he shall be obliged to accept the like notice on the back of an issue of *Nul tiel record.*

Where notice to be delivered

Where the plaintiff has entered an appearance for the defendant, pursuant to the act of parliament, left a declaration for him in the

 office,

to defendant, or left at his last place of abode.

office, given him proper notice thereof, and signed judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to such defendant, or leaving the same for him at his last or most usual place of abode, which shall be a sufficient notice to such defendant. *Mich.* 1 *Geo.* 2.

Notice of inquiry not to be given to defendant if his attorney be known.

Notice of trial or of (*a*) executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known, notice of trial or of executing a writ of inquiry may be given to the defendant. *Rep. and Cas. of Pract. C. P.* 62. *Pract. Reg. C. P.* 275.

The form of the notice.

Common Pleas. *John Denn* against *Richard Fenn.*

SIR,

The form of a notice of inquiry.

Be pleased to take notice, that a writ of inquiry of damages in this cause will be executed on *Monday* the fourteenth day of *May* instant, between the hours of ten and twelve in the forenoon, at the *Court-House* at *Westminster.*

Your humble servant,

To Mr. N. C.
Attorney for deft.

L. R.
Attorney for the plt.
4th May 1778.

Notice

(*a*) *Barnes* 311.

As to the time. Notice of executing a writ of inquiry at eleven of the clock in the forenoon is good, if the writ be executed before twelve. *Pract. Reg. C. P.* 446. *Barnes* 302.

Notice of executing a writ of inquiry between the hours of eleven and two is bad, it ſhould be confined to two hours at moſt, as between ten and twelve. *Rep. and Caſ. of Pract. C. P.* 113. *Pract. Reg. C. P.* 445, 446. *Barnes* 296.

Notice of executing a writ of inquiry at ten in the forenoon, or ſo ſoon after as the ſheriff can attend, is bad for incertainty. *Rep. and Caſ. of Pract. C. P.* 99. *Pract. Reg. C. P.* 134. *Barnes* 295.

And place. The notice ſhould be certain as to the place, *viz.* the houſe, ſtreet, *&c.* A notice of executing a writ of inquiry at the ſign of the *Three Tons* in *Brook-ſtreet*, *Middleſex*, was held bad, not ſaying where that *Brook-ſtreet* was, *viz.* in *Holborn*, there being three *Brook-ſtreets* in *Middleſex.* Lemark *v.* Newman, Trin. 10 Geo. 2. Pract. Reg. C. P. 447. Barnes 299, 300. Com. Rep. 551.

Notice to country attorney. Notice of inquiry may be given in the country to the country attorney. *Barnes* 305. *Vide antea* 196.

Of executing inquiry before a judge of aſſiſe. Notice for executing a writ of inquiry before a judge at the aſſizes ought to be for the aſſizes generally, and not for any particular day, and need not be entered with the marſhal, it not being within the rule concerning records of *Niſi prius*, the judge being no more than an aſſiſtant to the ſheriff to whom the writ was directed.

Promissory note, &c. must be proved on writ of inquiry.

If the action be on a promissory note or bill of exchange, the letting judgment go by default is not such an admittance of the note or bill, as to render the proof of them unnecessary; on the contrary they must be proved on executing the writ of inquiry. *Barnes* 233. but *Gould* J. C. P. upon judgment by default, in an action upon a promissory note of hand, or bill of exchange, the sum due thereon, is admitted, and need not be proved upon the execution of the writ of inquiry, 3 *Wils. Rep. C. B.* 165. *H.* 11 *Geo.* 3. *A. D.* 1771. *Anon.*

Irregularities cured by defence.

Irregularity in the notice, *&c.* is cured by the defendant's making a defence on executing the writ of inquiry. *Barnes* 233, 413.

After defence made on executing a writ of inquiry, defendant cannot take advantage of mistake in declaration. 2 *Wils.* 380.

Inquiries set aside.

Inquiries have been set aside for excessive damages, and where the sheriff has admitted improper evidence to lessen damages.

Inquisition taken before *two* under sheriffs *extraordinary*, set aside. 2 *Wils.* 378.

Motion to set aside inquisition may be made on the sixth day in term, after inquiry returnable, *if final judgment be not before signed.* 2 *Wils.* 379.

A writ of inquiry of damages,

Writ of inquiry.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the

sheriff of *Middlesex*, greeting. Whereas *B. C.* late of *S.* in your county, gentleman, was attached to be in our court before our justices at *Westminster*, to answer *D. E.* in a plea, wherefore whereas the said *B.* on the tenth day of *March* in the year of our reign, at *Westminster* in the county of *Middlesex*, &c [*as in the declaration to*] to the damage of the said *D.* of fifty pounds, as he saith; and it was in such manner proceeded in our said court, that the said *D.* ought to recover against the said *B.* his damages, by occasion of the not performing the said promises and undertakings (*or by occasion of the premisses, by occasion of the said trespass, trespass and assault, breach of the covenant, or the like, as the action is.*) But because it is unknown what damages the said *D.* has sustained by occasion of the premisses, we command you, that by the oath of twelve good and lawful men of your county (*if in* London, *say, of your bailiwic*) you diligently inquire what damages the said *D.* hath sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall make thereof make appear to our justices at *Westminster*, on the morrow of the ascension of our Lord, under your seal, and the seals of them by whose oath you shall make that inquisition; and have you there the names of them by whose oath you shall make that inquisition, and this writ. Witness

ness * Sir *William De Grey*, knight, at *Westminster*, the day of
in the seventh year of our reign.

Cooke.

If the action be at the suit of an attorney of the court, the writ of inquiry is in this form:

The form when at the suit of an attorney.

GEORGE the third, *&c.* To, *&c.* Whereas *C. V.* was attached by our writ of privilege issuing out of our court here, to be before our justices at *Westminster*, to answer *S. O.* gentleman, one of the attornies of our court of the bench, according to the liberties and privileges of the same court, for such attornies and other ministers of the same bench, time out of mind used and approved in the same; for that, *to wit*, That whereas the said *S.* on the day of, *&c.* (*setting forth the declaration to*) to the damage of the said *C.* of twenty pounds, as is said; and it was in such manner proceeded in our said court, That, *&c.* (*as before, making the writ returnable on a day certain, as on* Monday *next after fifteen days of* Easter, *and not on a general return day.*)

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* A writ of inquiry in this court was tested *Philip* lord *Hardwick*, instead of Sir *John Willes*; on writ of error brought, it was held this was no good cause of error, and judgment was affirmed. *Andr.* 74. 2 *Str.* 1080. Whether writ be not sufficient without adding day or year, after the name of the chief justice, in the *teste*. See *Barnes* 425, 426.

If

If an attorney be defendant, the form is thus:

When against an attorney.

GEORGE the third, *&c.* To, *&c.* Whereas *D. W.* by *W. T.* his attorney, came into our court before our justices at *Westminster*, and exhibited to our said justices his bill against *T. P.* gentleman, one of the attornies of our court of the bench, present in our said court, in his proper person, for that, *&c.* (*as before*) and the writ to be returnable on a day certain.

Writs of inquiry are to be signed by the prothonotary before they are sealed.

If your witnesses will not voluntarily attend, you may have a *Subpœna* for them in this form:

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To *A. B. C. D. E. F.* and *G. H.* greeting. We command you, and each of you, firmly injoining, that all other matters laid aside, and notwithstanding any excuse, you be in your proper persons before the sheriff of *Middlesex*, at the *Court-House* at *Westminster*, on the day of at eleven of the clock in the forenoon of the same day, to testify the truth in a certain matter of controversy depending in our court before our justices of the bench, between *K. J.* plaintiff, and *S. H.* defendant, in a plea of trespass on the case; and this you are not to omit under the penalty of one hundred pounds. Witness Sir *William De Grey*, knight, at *Westminster*,

Subpœna ad testif. *on a writ of inquiry.*

Westminster, the twelfth day of *May* in the seventh year of our reign.

Cocke.

When the writ is signed and sealed, you make out tickets for the witnesses to the following effect, *viz.*

Mr. ———

By virtue of a writ of *Subpœna* to you directed, and herewith shewn unto you, you are personally to be and appear before ——— our sheriff of the county of ——— or his under sheriff on ——— the ——— day of ——— at ten o'clock in the forenoon of the same day, at the house of ——— the sign of the *King's Arms*, in ——— in the said county, then and there to testify the truth, according to your knowledge, upon a writ of inquiry of damages, to be then and there executed in a certain cause now depending between ——— plaintiff and ——— defendant, in a plea of ——— on the part of the plaintiff. And this you are not to omit upon pain of 10*l.* Dated the ——— day of ——— in the eighteenth year of the reign of our sovereign lord *George* the third, by the grace of God of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, and so forth, and in the year of our Lord 1778.

By the court.

When the writ of inquiry is returned by the sheriff, you get the inquisition stamped with a double half-crown stamp, and then carry

carry it to the prothonotary to tax your costs; and after that you deliver it to the clerk of the judgments to enter up final judgment on the roll.

On signing judgment, the inquisition to be left with the clerk of the judgments.

Where final judgments shall be signed on inquisitions upon writs of inquiry, the inquisition shall be immediately left with the clerk of the judgments of the respective prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin.* 29 *Car.* 2. *Trin.* 13 *Geo.* 2.

If inquiry not executed according to notice, deft. to have costs.

Where notice is given of a writ of inquiry, and not countermanded in time, the defendant shall be intitled to costs from the plaintiff, for not executing such writ of inquiry, in the same manner as a defendant, by the course of the court, is now intitled to costs from a plaintiff who does not proceed to trial of an issue joined after notice given. *Trin.* 13 *Geo.* 2.

Of bringing in rolls and docketing the rolls.

Attorney on receiving roll from prothonotary's office to sign the book.

EVERY attorney that shall receive any roll, either plea or common, from the respective prothonotaries of this court, shall sign and set his name to such prothonotary's book, from whom he shall receive the same; and no prothonotary shall deliver any roll but to the proper hand of some known attorney or clerk of their respective offices. *Pas.* 34 *Car.* 2.

No

Rolls not to be carried into the country.

No attorney ſhall carry any rolls of this court into the country. *Paſ.* 12 *Jac.* 1. *Mich.* 1649. *Mich.* 1654. *Paſ.* 34 *Car.* 2.

When attornies are to bring their rolls. Eaſter *term.*

Every attorney of this court, that ſhall receive any roll or rolls as aforeſaid, plea or common, of any *Eaſter* term, ſhall bring the ſame into the office from whence he received it on or before the firſt day of the next *Trinity term.*

Trinity.

And the rolls received of any *Trinity* term ſhall be brought into ſuch office on or before the feaſt-day of St. *Michael* the archangel next enſuing the ſaid term.

Michaelmas.

And the rolls received of any *Michaelmas* term ſhall be brought into ſuch office on or before the ſixth day of *January* next enſuing.

Hilary.

And the rolls received of any *Hilary* term ſhall be brought into ſuch office by the ſpace of four days before the feaſt of *Eaſter* next after the ſaid term. *Paſch.* 34 *Car.* 2.

Caret paper.

The prothonotaries, on delivering the common rolls to the clerk of the warrants, are alſo to deliver a note of the rolls that are wanting; the ſame note to be ſubſcribed by the clerk of the warrants, and redelivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the eſſoins, is to take the like note from the clerk of the eſſoins of the rolls wanting. *Mich.* 1654.

No poſt rolls to be delivered to attornies.

The clerk of the eſſoins ſhall not deliver out any poſt rolls, or other rolls of this court, to any attorney or clerk of this court, but to the reſpective prothonotaries and other officers

cers of this court, that have a right to ſuch rolls. *Paſch.* 34 *Car.* 2.

When the officers are to carry in the rolls to the clerk of the eſſoins.

The ſeveral and reſpective *officers* of this court ſhall deliver in all their rolls of *Trinity*, *Michaelmas*, and *Hilary* term, to the clerk of the eſſoins, before the eſſoin-day of the ſeveral terms following; and their rolls of *Eaſter* term upon or before the firſt day of *Trinity* term following; and the officer, who ſhall not bring or ſend in all his rolls of the ſaid ſeveral terms at the times aforeſaid, ſhall pay to the clerk of the eſſoins, for every roll brought in after 12*d.* 6 *Jac.* 1. *Paſ.* 5 *W.* & *M.*

The plea rolls of every term ſhall be brought in to the clerk of the eſſoins three weeks after the end of the term following, and, in default thereof, there ſhall be likewiſe paid to the clerk of the eſſoins, for every plea roll brought in after, 12 *d.* *Paſ.* 5 *W.* & *M.*

The clerk of the eſſoins to lay before the court an account of what rolls are wanting.

The clerk of the eſſoins ſhall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the ſaid rules, together with the attornies names who took them out of the ſaid offices, that this court may proceed as they ſhall think fit againſt ſuch perſons as ſhall not have brought in their rolls according to the ſaid rules. *Trin.* 2 *Geo.* 1.

Of docketing judgments.

On carrying in your rolls to the prothonotary you are to docket them on the common docket, in the manner as you'll ſee others, thus:

Not informed in debt.

Middlesex. *West* for *Burton*		Roll 225
	Parker for *Taylor*,	

Says nothing in Case.

M.	Same for same, Same for same,	Same.

Forejudger.

M.	Same for *W.fce*, against *Wilson* ... attorney,	342.

Execution by default.

M.	Same for same, against *Vanbrugh.* adminift.	Same.

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inspect the same, and estreat all fines and amerciaments against sheriffs and others that he shall find amongst the said rolls, and then to deliver them to the clerk of the essoins, who dockets them, pursuant to the statute of 4 & 5 of *W.* & *M.* *c.* 20. then binds them up, and carries them over to the treasury at *Westminster*.

Of executions.

Ca. sa.

1. A *Capias ad satisfaciendum* is a writ which issues after a judgment; and by this writ the sheriff is commanded to take the

the body of the defendant, and have him in court at the return of the writ to satisfy the plaintiff.

This writ was by the common law only in trespasses, *Quare vi armis*, being direct and wilful wrongs; but now by the statute 25 *Ed.* 3. may issue in other cases. It is deemed a full execution, and in the law sufficient for the whole debt; *corpus humanum non recipit æstimationem*; and where the body is taken on a *Capias ad satisfaciendum*, no other execution can be had against the defendant's lands or goods. But in case the defendant dies in execution, by the statute 21 *Jac.* 1. *c.* 24. the plaintiff, his executors or administrators, may lawfully sue forth execution against the lands and tenements, goods and chattels of the defendant so dying in execution, in like manner as if the deceased defendant had never been taken in execution: In this case the judgment must be revived by *Scire facias*.

If deft. dies in execution, plt. may have execution against the lands or goods.

If two be bound jointly and severally to me, and I sue them jointly, I may have a *Capias* against them both, and the death or escape of one, shall not discharge the other; but I cannot have a *Capias* against the one, and another kind of execution against the other, because though they be two several persons, yet they make but one debtor, when I sue them jointly; but if I sue them severally, I may sever them in their kinds of execution; though if once any satisfaction be had of one, or against the sheriff for an escape

 of

of one, the rest may be relieved upon an *Audita querela.* Hob. 59.

Fi. fa.

2. A *Fieri facias* is a writ which commands the sheriff to levy the debt or damage, and costs recovered by a judgment of the goods of the defendant, and to have the same in court at the return of the writ to satisfy the plaintiff.

Where executed after defendant's death. 3 Danv. 319. pl. 8.

If after this writ is sued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or administrators.

If only part levied, Ca fa. *or* Elegit *for residue.*

If only part of the debt or damages be levied, the plaintiff may have a *Ca. sa.* or *Elegit* for the residue. *Hob.* 57, 58.

After *Fi. fa.* executed, and thereby part of the debt and costs levied; plaintiff before return irregularly sued out a *Test. Fi. Fa.* and under it levied the residue. Court of *C. P.* set aside the *Test.* and ordered restitution and costs. *Barnes* 213.

Where *Fi. fa.* not returned, continuances entered on the roll, not sufficient, to support *Ca. sa.* on old warrant of attorney, not revived, and *Ca. sa.* set aside with costs, and *Supersedeas* awarded to discharge defendant.

Defendant arrested by *Ca. sa.* pays the money to the sheriff's officer; at the return, sheriff returns that *Fi. fa.* against the goods of the plaintiff in *Ca. sa.* at suit of defendant therein was delivered to him, and that he levied the money in *Fi. fa.* out of the cash received on *Ca. sa.* return held insufficient, and sheriff ordered to pay money levied

levied under *Ca. ſa.* to plaintiff therein, deducting poundage. *Barnes* 214.

3. *Elegit*; this writ is given by the ſtatute of *W.* 2. 13 *Ed.* 1. *c.* 18. And by this writ the ſheriff is to deliver to the plaintiff all the chattels of the defendant, except his oxen and the beaſts of his plow, and one half of his land, to hold until the debt or damages, and coſts recovered, be ſatisfied, upon a reaſonable price or extent.

Elegit.

If on an *Elegit* only goods be levied, and theſe not ſufficient to ſatisfy the judgment, the plaintiff may have a *Capias* for the reſidue, it being in effect but a *Fieri facias.* Hob. 58.

If only part levied. Ca. ſa. *for the reſt.*

If I take out a *Ca. ſa.* or *Fi. ſa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob.* 57.

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the ſheriff, and all incident charges of the execution. *Barnes.* 198.

If execution be not ſued out within a year, the judgment muſt be revived by *Scire facias. Barnes* 197. 206. but ſee 210.

Execution to be ſued out within the year, or elſe a Sci. fa.

But on a rule to ſhew cauſe, why a *Fieri facias* ſhould not be ſet aſide, the judgment being above a year old, and not revived by *Scire facias*, nor any continuances of a *Fieri facias* entered on record; the plaintiff having, before cauſe ſhewn, entered the continuances, and producing intervening writs of *Fieri facias*

Where helped by continuances on the rolls, &c.

cias to warrant the fame, the rule was discharged.

Of Teftatum *Executions.*

In cafe of a *Teftatum fieri facias* or *Ca fa.* the court will not go into a nice inquiry whether the *Fieri facias*, or *Ca. fa.* into the original county to warrant the *Teftatum*, was fued out; it is fufficient if the firft *Fieri facias*, or *Ca. fa.* returned be produced. *Barnes* 211.

Of execution pending action on the judgment.

If the plaintiff hath brought an action of debt on the judgment, he cannot take out an execution of that judgment, until he hath difcontinued the action of debt. *Barnes* 208.

After execution executed the court cannot inquire into the Quantum *of debt and cofts.*

It hath been held, that after execution executed, though the judgment be for a penalty, the court cannot refer to the prothonotary to inquire what is due for principal, intereft, and cofts; and what is levied in order to make reftitution of the furplus, without confent of the plaintiff; but the defendant muft apply for relief to a court of equity. *Barnes* 204.

Capias ad fatisfaciendum *in debt.*

Ca. fa. *in debt.*

	s.	d.
Signing	0	4
Seal	0	7
Duty	2	0
	2	11

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the fheriffs of *London*, greeting. We command you, that ye take *W. B.* late of *London*, cabinet-maker, otherwife called *W. B.* late of the parifh of in the county of *Middlefex*, cabinet-maker, if he be found in your bailiwic, and keep him fafely, fo that you may have

have his body before our justices at *Westminster* on the morrow of the holy *Trinity*, to satisfy *R. R.* as well of a certain debt of fifty pounds, which the said *R.* in our court before our justices at *Westminster* recovered against him, as of sixty-three shillings, which in our said court were adjudged to the said *R.* for his damages, which he had by occasion of the detaining that debt, whereof the said *W.* is convicted; and have there this writ. Witness Sir *William De Grey*, knight, at *Westminster*, the day of in the seventh year of our reign.

To satisfy *R. R.* of fifty pounds, which were adjudged to the said *R.* in our said court, before our justices at *Westminster*, for his damages which he sustained by occasion of a certain trespass on the case done to the said *R.* by the said *W.* at *S.* in your county, whereof he is convicted; and have you there this writ. Witness, &c.

Trespass on the case.

For his damages which he had by occasion of the not performing certain promises and undertakings made to the said *R.* by the said *W.* at *W.* in your county; whereof, &c.

Trespass on the case sur assumpsit.

For his damages which he had by occasion of the not performing a covenant made between the said *W.* and the said *R.* according to the force, form and effect of certain indentures [*or articles*] made between them; whereof, &c.

Breach of covenant.

For his damages which he sustained by occasion of a certain trespass and assault, made on the said *R.* by the said *W.* with force and

Trespass and assault.

 arms.

arms, and against our peace, at *W.* in your county; whereof, &c.

Trespass. For his damages which he sustained by occasion of a certain trespass done to the said R. by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

In ejectment for damages. For his damages which he sustained by occasion of a certain trespass and ejectment of a farm done to the said *R.* by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

Replevin. For his damages which he had by occasion of the taking and unjustly detaining the cattle of the said *R.* at *W.* in a certain place called the *H.* in your county; whereof, &c.

Words. For his damages which he had by occasion of the speaking and publishing certain false and scandalous words by the said *W.* of the said *R.* at *B.* in your county, whereof, &c.

Testatum Ca sa. Signing 0 s. 8 d. If you make out a *Testatum Ca. sa.* you are to write as before, to [whereof he is convicted *inclusive*] and after those words you are to proceed thus; and whereupon our sheriff of *N.* [*the sheriff to whom the first* Ca. sa. *was directed*] sent to our justices at *Westminster* at a certain day now past, that the said *W.* was not found in his bailiwic, whereas it is testified in our said court, that he lurketh and secreteth himself in your county; and have there, &c.

Ca. sa. after a Sci. fa. If it be after a *Sci. fa.* then after the words [whereof he is convicted] say, and whereupon it is considered in our said court, that the aforesaid *R.* have his execution against the

the aforesaid *W.* of the debt and damages aforesaid, by the default of the said *W.* and have there, *&c.*

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, *&c.* To the sheriff of, *&c.* greeting. We command you, that you take *V. C.* late of, *&c.* if he be found in your bailiwic, and keep him safely, so that you may have his body before our justices at *Westminster* on the octave of the holy *Trinity* to satisfy *J. F.* administrator of the goods and chattels which were of *B. F.* during the minority of *W. F.* executor of the testament and last will of the said *B.* late executor of the testament and last will of *W. B.* deceased, as well of a certain debt of sixty pounds, which the aforesaid *B.* lately in our court before our justices at *Westminster* recovered against the said *V.* as of fifteen pounds, which in our said court were adjudged to the said *B.* for his damages which he had by occasion of the detaining that debt whereof the said *V.* is convicted; and whereupon it is considered in our said court, that the aforesaid *J.* have his execution against the said *V.* of the debt and damages aforesaid, by the default of the said *V.* And whereupon our sheriffs of our city of *Exeter* have returned to our justices at *Westminster* at a certain day now past, that the aforesaid *V.* is not found in their bailiwic, whereas it is testified in our said court, that the said *V.* lurketh and secreteth

A Testatum Ca. sa. *after a* Sci. fa. *by an administ.* durante minoritate executoris *of an executor.*

Sci. fa.

Testatum.

creteth himſelf in your county; and have there this writ. Witneſs, &c.

Teſtatum Ca. ſa. *for the reſidue after a* Fi. fa. *in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, &c. To the ſheriff of *Lincoln*, greeting. We command you, that you take *W. G.* late of *S.* in the county of *Leiceſter*, gentleman, otherwiſe called *W. G.* of *S.* in the county of *Leiceſter*, gentlemen, if he ſhall be found in your bailiwic, and keep him ſafely, ſo that you may have his body before our juſtices at *Weſtminſter* in fifteen days from the day of Saint *Martin*, to ſatisfy *W. R.* gentleman, of eighteen pounds nine ſhillings and one penny, parcel of a certain debt and damages, *to wit*, of a certain debt of forty pounds, which the ſaid *W. R.* in our court before our juſtices at *Weſtminſter* recovered againſt him; and of forty ſhillings which in your ſaid court were adjudged to the ſaid *W. R.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *W. G.* is convicted, of which ſaid debt and damages twenty-three pounds ten ſhillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattles of the ſaid *W. G.* And whereupon our ſheriff of *N.* ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *W. G.* is not found in his bailiwic, whereas it is teſtified in our ſaid court, that the ſaid *W. G.* lieth hid, wandereth and ſculketh in your

Teſtatum.

your county; and have there this writ. Witness, &c.

GEORGE the third, &c. To, &c. greeting! We command you, that you take W. A. late of, &c. and W. S. late of, &c. if they be found in your bailiwic, so that you may have their bodies before our justices at Westminster, on to wit, to the said W. A. to satisfy R. B. of twenty pounds, and the said W. S. to satisfy the said R. B. of forty pounds, for his several damages which the said R. sustained by occasion of a certain assault, beating, wounding and ill treatment made on the said R. by the said W. and W. and against our peace with force and arms, at B. in your county, as is found by a certain inquisition of the country of your county taken between them; and also the said W. and W. to satisfy the said R. of seventeen pounds which were adjudged to the said R. in our said court, for his costs and charges which he sustained by occasion of the premises; whereof they are convicted; and have there, &c.

Ca. sa. against two where several damages by inquiry in trespass and assault.

To satisfy C. D. late of, &c. esq; of nine pounds and ten shillings, which in our court before our justices at Westminster, by the discretion of the said justices, according to the form of the statute in that case made and provided, were adjudged to the said C. for his costs and charges which he sustained, for that the said E. T. did not prosecute his writ by him the said E. obtained in our said court against the said C. in a certain plea of debt upon

Upon a nonsuit in debt.

upon demand for forty pounds, whereof the ſaid *E*. is convicted; and there, *&c.*

If in caſe, ſay, —— in a certain plea of treſpaſs on the caſe.

In treſpaſs, ——in a certain plea of treſpaſs.

In ejectment,——in a certain plea of treſpaſs and ejectment of farm; *et ſic de cæteris.*

A Teſtatum Ca. ſa. *of privilege for an attorney againſt an attorney, in debt.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *L*. greeting: Attach *L. R*. gentleman, one of the attornies of our court of the bench, otherwiſe called *L. R.* of, *&c.* ſo that you may have him before our juſtices at *Weſtminſter* on *Wedneſday* next after the morrow of *All Souls*, to ſatisfy *J. S*. gentleman, another attorney of our court of the bench, as well of a certain debt of ſixty pounds, which the ſaid *J*. in our court before our juſtices at *Weſtminſter* recovered againſt him, as of fourteen pounds and ten ſhillings which were adjudged to the ſaid *J*. in our ſaid court, for his damages which he had by occaſion of the detaining that debt, whereof the ſaid *L*. is convicted; and whereupon our ſheriff of *M*. ſent to our juſtices at *Weſtminſter* at a certain day now paſt, that the ſaid *L*. was not found in his bailiwic, whereas it was teſtified in our ſaid court, that he lurketh and ſecreteth himſelf in your county; and have there this writ. Witneſs, *&c.*

Teſtatum.

GEORGE

A Testatum Ca. sa. by a surviving plaintiff against an attorney, in debt.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriffs of *N.* greeting. Attach *W. T.* gentleman, one of the attornies of our court of the bench, otherwise called *W. T.* of, *&c.* so that you may have him before our justices at *Westminster* on next after to satisfy *V. D.* as well of a certain debt of five hundred pounds, which the said *V. D.* and one *T. J.* now deceased, in our court before our justices at *Westminster* recovered against him, as of nine pounds which in our said court were adjudged to the said *V.* and *T.* for their damages which they had by occasion of the detaining that debt, whereof the said *W.* is convicted; and whereupon it is considered in our said court, that he the said *V.* have execution against the said *W.* of the debt and damages aforesaid, by the default of the said *W.* And whereupon our sheriffs of *London* sent to our justices at *Westminster* on a certain day now past, that the said *W.* was not found in their bailiwic, whereas it is testified in our said court, that the said *W.* lurketh and secreteth himself in your county; and have there this writ. Witness, *&c.*

Sci. fa.

Testatum.

Testatum Ca. sa. *against bail after* Nulla Bona *returned on a* Fi. fa'. *Recital of* Fi. fa.

GEORGE the third, by the grace of God of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Surry*, greeting. Whereas we lately commanded our sheriff of *Middlesex*, that he should cause to be made of the lands and chattels

chattels in his bailiwic of *T. S.* late of, *&c.* thirty-eight pounds; and of the lands and chattels in his bailiwic of *F. F.* late of, *&c.* other thirty-eight pounds; and of the lands and chattels in his bailiwic of *T. P.* late of, *&c.* other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our justices of the bench at *Westminster*, severally acknowledged themselves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the use and behoof of the said *E. P.* and *W. F.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is inrolled, as by the said record and proceedings thereon in our same court before our said justices at *Westminster* aforesaid remaining manifestly appears; and that he should have that money before our said justices at *Westminster* from the day of *Easter* in fifteen days last past, to render to the said *E.* and *W.* for the several sums of money aforesaid, according to the form of the said recognizance whereof they are convicted; and whereupon it is considered in our said court, that the said *E.* and *W.* should have their execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. F.* and *T. P.* And whereupon our sheriff of *Middlesex* at that day sent to our said justices at *Westminster*,

Return.

minster, that the said *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwic, whereof he was able to make the said several sums of 38*l.* 38*l.* and 38*l* or any part thereof: We therefore command you, that you take the said *T. S. F.* and *T. P.* if they may be found in your bailiwic, and keep them safely, so that you may have their bodies before our justices at *Westminster* on the morrow of the Holy *Trinity*, to satisfy the aforesaid *E.* and *W.* of the said several sums of thirty-eight pounds, according to the form of the said recognizance, whereof they are convicted; and whereupon our said sheriff of *Middlesex* sent to our said justices at *Westminster* from the day of *Easter* in five weeks last past, that the aforesaid *T. S. F.* and *T. P.* were not, nor was any one of them found in his bailiwic, whereas it is testified in our said court, that they lurk and secrete themselves in your county; and have there, &c.

Testatum.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To the sheriff of *D.* greeting. Whereas we lately by our writ commanded our sheriff of *M.* that of the goods and chattels in his bailiwic, which were of *S. V.* late of, &c. at the time of his death, in the hands of *V. C.* gentleman, late of, &c. executor of the testament and last will of the said *S.* he should cause to be made as well a certain debt of five hundred pounds, which *W. W.* in our court before our justices at

Testatum Ca. sa. *against an executor after a* Devastavit *and* Nul aBona *returned.*

at *Westminster* recovered against the said *V. C.* as also eighteen pounds which in our said court were adjudged to the said *W.* for his damages which he had by occasion of the detaining that debt, if the said *V.* had so much in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *V.* and should have that money before our justices at *Westminster* on the morrow of the Purification of the blessed *Mary* last past, to render to the said *W.* for his debt and damages aforesaid, whereof he is convicted; and our said sheriff of *M.* at that day sent to our said justices at *Westminster*, that the said *V. C.* had before the coming of the said writ sold and wasted diverse goods and chattels which were of the said *S. V.* at the time of his death, to the value of the debt and damages aforesaid, and had converted the money arising therefrom to his own proper use, so that he could not levy, or cause to be made the said debt and damages of the goods and chattels of the said *S. V.* And the said *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwic, whereof he could cause to be made the said damages, or any part thereof, as by that writ he was commanded; therefore we command you, that you take the said *V. C.* if he may be found in your bailiwic, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow of the Ascension of our Lord, to satisfy the said *W.* of the debt and damages aforesaid; and whereupon our sheriff

sheriff of *M.* from the day of *Easter* in fifteen days last past sent to our justices at *Westminster*, that the said *V. C.* was not found in his bailiwic, whereas it is testified in our said court, that the said *V. C.* lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

Testatum.

GEORGE the third, &c. to the sheriff of *K.* greeting. Whereas we lately by our writ commanded you, that of the goods and chattels in your bailiwic, which were of *N. R.* deceased, at the time of his death, being in the hands of *M. R.* late of *N.* in your county, widow, executrix of the testament and last will of the said *N.* to be administer'd, you shall cause to be made thirty-four pounds, which in our court, before our justices at *Westminster*, were adjudged to *R. B.* for his damages which he sustained by occasion of the not performing certain promises and undertakings made to the said *R.* by the said *N.* in his life-time at *M.* in your county, if the said *M.* had so much thereof in her hands to be administered; and if she had not, then fourteen pounds and ten shillings of the damages aforesaid to be levied of the proper goods and chattels of the said *M.* and should have that money before our justices at *Westminster* from the day of the Holy *Trinity* in three weeks last past, to render to the said *R.* for his damages aforesaid, whereof she is convicted; and you at that day sent to our said justices at *Westminster*, that the said *M.* had no goods nor chattels in your bailiwic which

Ca. sa. *for damages against an executrix after* Nulla bona propria *returned.*

were

were of the ſaid *N.* at the time of his death, whereof you could cauſe to be made the ſaid damages, or any penny thereof, nor any of her own proper goods or chattels in your ſaid bailiwic, whereof you could cauſe to be made the ſaid fourteen pounds and ten ſhillings of damages aforeſaid, or any penny thereof; we therefore command you, that you take the ſaid *M.* if ſhe may be found in your bailiwic, and keep her ſafely, ſo that you may have her body before our juſtices at *Weſtminſter* from the day of to ſatisfy the ſaid *R.* of the ſaid fourteen pounds and ten ſhillings of damages aforeſaid; and have there this writ. Witneſs, *&c.*

Ca. ſa. *in caſe at the ſuit of an executrix.*

GEORGE the third, *&c.* To the ſheriffs of *London*, greeting. We command you, that you take *M. G.* late of *L.* widow, if ſhe ſhall be found in your bailiwic, and her ſafely keep, ſo that you may have her body before our juſtices at *Weſtminſter* to ſatisfy *E. K.* executrix of the teſtament and laſt will of *G. K.* her late huſband deceaſed, of one hundred and ſeventeen pounds and ten ſhillings, which to the ſaid *E.* in our court before our juſtices at *Weſtminſter*, were adjudged for the damages of the ſaid *G.* which he ſuſtained by reaſon of not performing certain promiſes and undertakings made by the ſaid *M.* to the ſaid *G.* in his life-time at *L.* aforeſaid in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, whereof the ſaid *M.* is convicted; and whereupon it was conſidered in our ſame court, that the damages

Sci. fa. *on* Stat. 8 & 9 W. 3. c.

damages aforesaid by him the said *G.* sustained by occasion of not performing the promises and undertakings aforesaid, should be assessed and adjudged to the said *E.* according to the form of the statute in that case made and provided, by default. Witness, *&c.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Lincoln*, greeting. We command you, that you cause to be made of the goods and chattels in your bailiwic of *B. C.* late of, *&c.* as well a certain debt of 20*l.* which *D. E.* in our court, before our justices at *Westminster* recovered against him, as sixty shillings which were adjudged to the said *D.* in our said court, for his damages which he had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the morrow of the Ascension of our Lord, to render to the said *D.* for his debt and damages aforesaid, whereof the said *B.* is convicted; and have there this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the day of, *&c.*

A Fieri *facias in debt.*

For varying the *Fieri facias* according to the nature of the action, the directions before given, *fol.* *&c.* for making out the *Capias ad satisfaciendum*, will serve.

In a *Testatum fieri facias*, after the words [*whereof he is convicted*] say, and whereupon our sheriff of *N.* sent to our justices at a cer-

Testatum Fi. fa.

tain day now past, that the said *B.* hath no goods or chattels in his bailiwic, whereof he could cause to be made or levied the said debt and damages, or any part thereof: Whereas it is testified in our said court, that the said *B.* hath sufficient goods and chattels in your county whereof the said debt and damages may be caused to be made and levied; and have there this writ. Witness, *&c.*

Fi. fa. *against an administratrix.*

GEORGE the third, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic, which were of *S. H.* deceased, at the time of his death, in the hands of *E. H.* late of, *&c.* widow, administratrix of the goods and chattels which were of the said *S. H.* to be administered, you cause to be made as well a certain debt of thirty pounds, which *R. F.* gentleman, in our court, before our justices at *Westminster* recovered against her, as ten pounds which in our said court were adjudged to the said *R.* for his damages which he had by occasion of the detaining that debt, if the said *E.* hath so much goods and chattels which were of the aforesaid *S.* at the time of his death in her hands to be administered; and if she hath not, then the damages aforesaid to be levied of the proper goods and chattels of the said *E.* And have that money before our justices at *Westminster* on the morrow of the Holy *Trinity*, to render to the said *R.* for the debt and damages aforesaid whereof she is convicted; and have there this writ. Witness, *&c.*

GEORGE

GEORGE the third, *&c.* To, *&c.* greeting. We command you, that of the goods and chattels in your bailiwic of *J. M.* late of, *&c.* and *E.* his wife, lately called, *&c.* you cause to be made twenty and five pounds and ten shillings which in our court, before our justices at *Westminster*, were adjudged to *J. J.* and *R. R.* for their damages which they sustained by occasion of the not performing certain promises and undertakings to the said *J.* and *R.* by the said *E.* when she was sole, made at *B.* in the county of *S.* And have that money before our justices at *Westminster* from the day of the Holy *Trinity* in three weeks, to render to the said *J.* and *R.* for their damages aforesaid, whereof the said *E.* is convicted; and whereupon it is considered in our said court, that the said *J.* and *R.* have their execution against the said *J. M.* and *E.* of the damages aforesaid, by the default of the said *J. M.* and *E.* And whereupon our sheriff of *S.* at a certain day now past, sent to our justices at *Westminster*, that the said *J. M.* and *E.* had no goods or chattels in his bailiwick, whereof the said damages could be made, whereas it is testified in our said court, that the said *J. M.* and *E.* have sufficient goods and chattels in your county, whereof the said damages may be made; and have there this writ. Witness, *&c.*

Testatum Fi. fa. *after* Sci. fa. *in case on* assumpsit *upon a recovery against the wife while sole.*

Sci. fa.'

Testatum.

GEORGE the third, *&c.* To, *&c.* We command you, that of the goods and chattels of *W. C.* late of, *&c.* otherwise called, *&c.* in your bailiwic, you cause to be made as well

Fi. fa *on a judgment by a* feme *executrix while sole, whereupon execution*

is awarded on a Sci. fa. *at the suit of the husband and wife.*

well a certain debt of one hundred and sixty pounds, which *E. W.* widow, executrix of the testament and last will of *S. W.* deceased, in our court, before our justices at *Westminster* recovered against him, as sixty shillings, which to the said *E.* in our said court were adjudged for her damages, which she had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the octave of the Purification of the blessed Virgin *Mary*, to render to *R. W.* whom the said *E.* married after the said judgment was given, and to the said *E.* for the debt and damages aforesaid, whereof the said *W.* is convicted; and whereupon in our said court before our justices at *Westminster* it is considered that the said *R.* and *E.* have execution against the said *W.* of the debt and damages aforesaid, by the default of the said *W.* And have there this writ. Witness, &c.

Sci. fa.'

A Fieri facias *against bail after* Sci. fa.'

GEORGE the third, by the grace of God, of *Great Britain*; *France*, and *Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting. We command you, that you cause to be made of the lands and chattels in your bailiwic of *T. S.* late, &c. gentleman, thirty-eight pounds; and of the lands and chattels in your bailiwic of *F. F.* late, &c. smith, other thirty-eight pounds; and of the lands and chattels in your bailiwic of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the

the Holy *Trinity* in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our justices of the bench at *Westminster*, severally acknowledged themselves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the use and behoof of the said *E. P.* and *W. F.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is inrolled, as by the said record and proceedings thereon in our said court before our justices aforesaid remaining manifestly appeareth; and have that money before our said justices at *Westminster* from the said day of *Easter* in fifteen days, to render to the said *E.* and *W.* for the debt aforesaid, according to the form of the said recognizance, whereof they are convicted; and whereupon it is considered in our said court, that the said *E.* and *W.* have execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. F.* and *T. P.* And have there this writ. Witness, &c.

Sci. fa.

And hereupon the said [*plaintiff*] prayeth the writ of our lord the king to be directed to the sheriff of the county aforesaid, to levy the said hundred pounds of the goods and chattels of the said [*defendant*] for the damages aforesaid. And it is granted to him returnable here [*the return*] at which day comes here the said [*plaintiff*] by his attorney aforesaid. And the sheriff hath not sent the said writ; therefore let another writ be

Award of Fi. fa. and continuances.

made to him in form aforesaid, &c. returnable here [*the return*] at which day [*ut supra.*]

Fi. fa. *in debt after* Sci fa. *for executors on judgment recovered by testator.*

GEORGE the third, &c. To the sheriff of *B.* greeting. We command you, that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwise called, &c. you cause to be levied as well a certain debt of 590 *l.* which *J. D.* in our court before our justices at *Westminster* recovered against him, as 50 *s.* which to the said *J. D.* in our said court were adjudged for his damages which he had sustained by reason of detaining that debt. And have you there that money before our justices at *Westminster* from the day of St. *Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* for the debt and damages aforesaid. And whereupon it is considered in our said court, that the aforesaid *W.* and *T.* have execution against the said *J. B.* of the debt and damages aforesaid, by the default of the said *J B.* whereof he is convicted; and have you there this writ. Witness, &c.

The first *Fieri facias* must be directed to the sheriff of the county where the action was laid; and on a return of *Nulla bona* you may have execution into any other county you shall think proper.

Elegit *in debt.*

GEORGE the third, &c. To, &c. greeting. Whereas *E. F.* lately in our court before

fore our justices at *Westminster*, by the consideration of the said court, recovered against *B. C.* late of, *&c.* as well a certain debt of fifty pounds, as ten shillings, which in our said court were adjudged to the said *E.* for his damages which he had by occasion of the detaining that debt, whereof the said *B.* is convicted. The said *E.* afterwards came into our said court, and by the statute in that case made and provided chose to have delivered to him all the goods and chattels of the said *B.* except his oxen and the beasts of his plow, and also a moiety of all his lands and tenements in your bailiwic, to hold to him the goods and chattels aforesaid, as his own proper goods and chattels; and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied; and therefore we command you, that all the said goods and chattels of the said *B.* except the oxen and beasts of his plow, and also a moiety of all his lands and tenements in your bailiwic, whereof the said *B.* on the octave of St. *Hilary* in the year of our reign, on which day the said judgment was given, or at any time after, was seised, you cause to be delivered by a reasonable price and extent, to hold to him the said goods and chattels as his own proper goods and chattels; and to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied; and in what manner you shall execute

execute this writ make appear to our justices at *Westminster*, on the morrow of *All Souls*, under your seal, and the seals of them by whose oath you shall make the said extent and appraisement; and have there this writ. Witness, *&c.*

Elegit *in trespass.*

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *L. R.* lately in our court before our justices at *Westminster*, by the consideration of the said court, recovered against *H. H.* late of, *&c.* thirty-five pounds, which in our said court were adjudged to the said *L.* for his damages, which he had by occasion of a certain trespass done to the said *L* by the said *H.* with force and arms against our peace at *W.* in your county, whereof the said *H.* is convicted. The said *L.* afterwards came into our court, *&c.* [*as before, using the word* damages *instead of* debt and damages.]

Elegit *after a* Sci. fa.

GEORGE the third, *&c.* To, *&c.* greeting. Whereas lately in our court before our justices at *Westminster* it was considered that *E. S.* have execution against *H. S.* late of, *&c.* otherwise called, *&c.* by the default of the said *H. S.* as well of a certain debt of twenty pounds, which the said *E.* in our court before our justices at *Westminster* recovered against the said *H.* as of fifty shillings, which in our said court were adjudged to the said *E.* for his damages, which he had by occasion of detaining that debt, whereof the said *H.* is convicted. The said *E.* afterwards came, *&c.* *as before.*

GEORGE

GEORGE the third, &c. To the sheriff of *Berks*, greeting. Whereas *E. K.* executrix of the testament and last will of *G. K.* her late husband, deceased, lately in our court before our justices at *Westminster*, by the consideration of the same court, recovered against *G. M.* late of *London*, widow, one hundred and seventeen pounds and ten shillings, which in our same court before our justices at *Westminster* aforesaid were adjudged to the said *E.* according to the form of the statute in that case lately made and provided, by the default of the said *M.* for the damages of the said *G.* which he had sustained by occasion of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time, whereof the said *M.* is convicted. And the said *E.* afterwards came into our same court, and by the statute in such case made and provided chose to have delivered to her all the goods and chattels of the said *M.* except the oxen and beasts of her plow. And likewise a moiety of all her lands and tenements in your bailiwic, to hold to her the said *E.* the goods and chattels aforesaid as her own proper goods and chattels, and also to hold the said moiety of the said lands and tenements as her own freehold, to her the said *E.* and her assigns according to the form of the statute aforesaid, until she hath levied the damages aforesaid. And therefore we command you, that without delay you do deliver to the said *E.* by a reasonable price and extent, all the goods and chattels of the said *M.* except the oxen and beasts of

Elegit *on a judgment by* Sci. fa. quare damna assideri non debent post mortem querentis port. per executricem.

Stat. 8 & 9 W. 3. c.

her

her plow. And in like manner the moiety of her lands and tenements in your bailiwic, of which the ſaid *M.* was ſeized on the octave of Saint *Hilary* in the ſeventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the ſaid *E.* and her aſſigns according to the form of the ſtatute aforeſaid, until ſhe ſhall have levied thereof the damages aforeſaid. And in what manner you ſhall execute this our writ make manifeſt to our juſtices at *Weſtminſter* aforeſaid, on the morrow of *All Souls*, under your ſeal, and the ſeals of them by whoſe oath you ſhall make the extent and appraiſement thereof. And have you there this writ. Witneſs, *&c.*

May have ſeveral Elegits.

A man may award on the roll *Elegits* into as many counties as he pleaſes, and execute all or any at his pleaſure; but it is ſaid, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot ſue out an *Elegit* into any other county.

Where by inquiſition on an *Elegit* it is found that the plaintiff was ſeiſed of the lands at the time the judgment was given, upon an ejectment (which muſt be) brought to recover the poſſeſſion, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquiſition thereupon filed, and is not bound to prove the party ſeiſed at the time of the judgment; and if he was not ſeiſed, it muſt be proved by the other ſide.

Of

Of PROCEEDINGS *for and against* Attornies.

WHERE an attorney is plaintiff, the first process is an attachment of privilege, which is in the following form:

GEORGE the third, *&c.* To, *&c.* greeting. Attach *T. R.* so that you may have him before our justices at *Westminster* on *Saturday* next after the morrow of *All Souls*, to answer *S. B.* gent. one of the attornies of our court of the bench, according to the liberties and privileges of the same court for such attornies and other ministers of the same bench from time out of mind used and approved in the same, of a plea of trespass [*as the action is.*] And have you there this writ. Witness Sir *William De Grey*, knight, at *Westminster*, the day of in the year of our reign.

Attachment for an attorney. Liber. Intrat. 220. k. V. Stat. 13 Car. 2. stat. 2. c. 2. s. 4.

An attorney suing by attachment of privilege and nonsuited, may be taken in execution for the costs on a *Ca. Sa.* returnable on a *general* return. 3 *Wils.* 58.

If the attachment requires bail you must mark the sum sworn to on the back, thus; ——— Affidavit for 42 *l.* —— And also the day it is sued out.

You must make out a *Præcipe*, containing the plaintiff's and defendant's names, not exceeding four in the whole, with the return of the

Præcipe *to be left with the prothonotary at the time of*

figning the writ.

the writ, day of figning, and the agent's or attorney's name, who fues out the fame; this *Præcipe* you muft leave with the prothonotary, who without fee or reward is to enter the fame on a remembrance roll, to be kept in his office for that purpofe; and he is not to fign (*a*) any attachment of privilege unlefs fuch *Præcipe* be left in his office at the time of figning thereof. *Hil.* 11 *Geo.* 2.

The form of the Præcipe.

Suffolk. Attachment of privilege for *S. B.* gentleman, one of the attornies, *&c.* againft *T. R.* Debt.

R. R. Agent, 7 *Oct.* 1767. *Ret.* Saturday *next after the morrow of* All Souls.

Affidavit for 42 *l.*

You pay nothing to the prothonotary for figning this writ, and only one penny for the feal.

Of appearing putting in bail thereto.

If the attachment requires only a common appearance, a copy muft be ferved with a notice, as in *fol.* and the appearance muft be entered with the prothonotary who figned the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece or recognizance, and attends a judge or the

(*a*) But the writ is to be firft marked by the clerk of the warrants, for which nothing is paid, unlefs plaintiff is in arrear for termages.

court,

court, when the ſame is entered into, and the bail juſtify, or freſh bail is added, in the ſame manner as the filacer does on meſne proceſs by original.

The declaration at the ſuit of an attorney begins in this manner:

In the Common Pleas.

Eaſter *term in the ſeventeenth year of the reign of king* George *the third.*

Middleſex, *to wit.* P. *B.* late of, *&c.* was attached by a writ of our lord the king of privilege, iſſuing out of the court here to anſwer *L. R.* gentleman, one of the attornies of the court of our lord the king of the bench here, according to the liberties and privileges of the ſame court, for ſuch attornies and other miniſters of the ſame bench time out of mind uſed and approved in the ſame, of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *L.* in his proper perſon complaineth, that whereas the ſaid *P.* on the nineteenth day of *December* in the year of our Lord one thouſand ſeven hundred and thirty-eight, at the pariſh of St. *Clement Danes* in the county of *Middleſex*, was indebted to the ſaid *L.* in thirty pounds of lawful money of *Great Britain*, for work and labour as an attorney and ſolicitor before that time done and performed by the ſaid *L.* upon the retainer, and at the ſpecial inſtance and requeſt of the ſaid *P.* in and about the proſecuting, defending and ſoliciting diverſe cauſes,

Declaration by an attorney for fees and diſburſements.

ſes, ſuits and buſineſſes, and for money laid out, expended and paid by the ſaid *L.* at the like ſpecial inſtance and requeſt of the ſaid *P.* in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes, and for money due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect; and being ſo indebted, he the ſaid *P.* in conſideration thereof, afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *L.* the ſaid ſum of money when he ſhould be thereunto requeſted. *And whereas* the ſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, in conſideration that the ſaid *L.* upon the retainer of the ſaid *P.* and at his ſpecial inſtance and requeſt, had before that time done and performed other work and labour as an attorney and ſolicitor in and about other cauſes, ſuits and buſineſſes, and laid out, expended and paid other money in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes laſt mentioned, undertook, and then and there faithfully promiſed the ſaid *L.* that he the ſaid *P.* would pay to the ſaid *L.* ſo much money as he reaſonably deſerved to have for his laſt mentioned work and labour; and ſo much money as he had laid out, expended and paid in and about the proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits and buſineſſes, and ſo much money as was

Quantum meruit *thereon.*

due

due to the ſaid *L.* for his fees due, and of right payable to him in that reſpect, when he the ſaid *P.* ſhould be thereunto requeſted. And the ſaid *L* averreth, that he reaſonably deſerved of the ſaid *P.* for his ſaid laſt mentioned work and labour, other thirty pounds of like lawful money, and that he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits, and buſineſſes, other thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the ſaid *L.* for his fees, due and of right payable to him in that reſpect, *to wit*, at the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *P.* afterwards, that is to ſay, on the ſame day and year aforeſaid, there had notice. *And whereas alſo* the aforeſaid *P.* afterwards, *to wit*, on the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, was indebted to the ſaid *L.* in fourteen pounds of like lawful money, for the like ſum of money by the ſaid *L.* at the ſpecial inſtance and requeſt of the ſaid *P.* before that time expended, laid out, diſburſed and paid; and being ſo indebted, the ſaid *P.* afterwards, *to wit*, on the ſame day and year at the pariſh aforeſaid in the county aforeſaid, in conſideration thereof undertook, and to the ſaid *L.* then and there faithfully promiſed, that he the ſaid *P.* the ſaid fourteen pounds to the ſaid *L.* when he ſhould be thereunto requeſted, would well and truly pay and content; *Yet* the ſaid *P.* in no wiſe regarding his ſaid ſeveral promiſes and un-

Indeb. aſſump *for money laid out.*

Breach.

dertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this respect, hath not paid to the said *L.* the said several sums of money, or any of them, or any part thereof (although the said *P.* afterwards, *to wit*, on the thirtieth day of *December* in the same year, at the parish aforesaid in the county aforesaid, was requested by the said *L.* so to do) but has hitherto refused, and still doth refuse to pay the same to the said *L.* to the damage of the said *L.* of thirty pounds; and thereof he bringeth suit, *&c.*

(*a*) Pledges for prosecuting { *John Doe*, and *Richard Roe.* }

Mr. *Rayner*, in his readings on stat. 2 *Geo.* II. chap. 23. sect. 23. hath given the profession a lecture on an action for fees, *&c.* See *Rayn. Read.* p. 62 to 107, including the previous steps necessary in regard to delivering the bill, before the commencement of the suit.

If an attorney be defendant, a bill must be prepared in the following form, according to the nature of the action.

(*a*) It hath been determined that *pledges* need not be put into the declaration by attachment of privilege. *Barnes* 163. but see 2 *Wilf. Rep. C. B.* 142, 143, which seems *contra.*

In

In the Common Pleas.

Of Easter *term in the seventeenth year of the reign of king* George *the third.*

To the justices of our lord the king of the bench.

Middlesex, *to wit*, R. *R.* gentleman, administrator of all and singular the goods and chattels, and credits of *R. F* clerk deceased, at the time of his death, who died intestate, by *J. C.* his attorney complaineth of *T. J.* gentleman, one of the attornies of the court of our now lord the king of the bench here present here in court in his proper person, for that, whereas the said *T.* in the life-time of the said *R. F. to wit*, on the ninth day of *April* in the year of our Lord 1767, at *Westminster*, in the county of *Middlesex* aforesaid, was indebted to the said *R. F.* in his life-time in 250*l.* of lawful money of *Great Britain*, for so much money by the said *T.* to the use of the said *R. F.* before that time had and received; and being so indebted the said *T.* afterwards, *to wit*, on the same day and year at *Westminster* aforesaid in the county aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *R. F.* in his life, to pay him the said sum of money when he should be requested to pay the same; *yet* the aforesaid *T.* not at all regarding his promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive

Bill against at attorney at the suit of an administrator.

Indeb. assump. *for money had and received in life-time of intestate.*

Breach.

ceive and defraud the ſaid *R. F.* in his life-time, and the ſaid *R. R.* ſince the death of the ſaid *R. F.* hath not yet paid the aforeſaid ſum of money, or any part thereof, to the ſaid *R. F.* in his life-time, or to the ſaid *R. R.* ſince the death of the ſaid *R. F.* (to which ſaid *R. R.* ſince the death of the ſaid *R. F.* *to wit*, on the 16th day of *June* in the year of our Lord 1767, at *Weſtminſter* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods, chattels and credits which were the goods, chattels and credits of the ſaid *R. F.* at the time of his death, by *William*, by Divine Providence archbiſhop of *Canterbury*, primate of all *England* and metropolitan, was committed) although the aforeſaid *T.* in the life-time of the ſaid *R. F.* by him the ſaid *R. F.* and after the death of him the ſaid *R. F.* by the aforeſaid *R. R.* *to wit*, on the 17th day of *June* in the year of our Lord 1767, aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, was requeſted ſo to do; but he hath abſolutely refuſed to pay the ſame to the ſaid *R. F.* and ſince the death of the ſaid *R. F.* hath, and ſtill doth refuſe to pay the ſame to the ſaid *R. R.* to the damage of the ſaid *R. R.* of 300*l.* And thereupon he prayeth relief, &c. And the ſaid *R. R.* bringeth here into court the letters of adminiſtration aforeſaid, to him as aforeſaid granted, which teſtify the granting of the adminiſtration aforeſaid to the ſaid *R. R.* in form aforeſaid,

Adminiſtration committed.

Profert.

aforesaid, bearing date the day and year in that respect above mentioned, and so forth.

Pledges for prosecuting, *to wit*, { *John Doe*, and *Rich. Roe*.

Bill against an attorney and declaration thereon, amended by striking out words. *Barnes* 24. See id. 26.

In the Common Pleas.

Hilary *term in the seventeenth year of the reign of king* George *the third.*

To the justices of our lord the king of the bench.

Bill against an attorney on a promise to deliver back a gold watch, or pay 14 guineas for it, by a certain day.

Middlesex, *to wit*, *J. T.* by *E. B.* his attorney, complaineth of *J. H.* gent. one of the attornies of the court of our now lord the king of the bench here present here in court in his proper person, for that on the 12th day of *November* in the year of our Lord 1767, at the parish of St. *Clement Danes* in the county of *Middlesex*, in consideration that the said *J. T.* at the request of the said *J. H.* then and there delivered to the said *J. H.* a gold watch of the said *J. T.* and the said *J. H.* then and there received the same gold watch of the said *J. T.* he the said *J. H.* undertook, and then and there faithfully promised the said *J. T.* to

deliver back the ſaid gold watch to the ſaid *J. T.* or to pay the ſum of 14 *l.* 14 *s.* to the ſaid *J. T.* for the ſaid gold watch, on or before the firſt day of *December* then next enſuing; *yet* the ſaid *J. H* not regarding his ſaid promiſe and undertaking, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T* in this behalf, hath not yet delivered back the ſaid watch to the ſaid *J. T.* nor paid him the ſaid 14*l.* 14*s.* nor any part thereof (although the ſaid *J. H.* afterwards, *to wit*, on the firſt day of *December* in the year aforeſaid, and often afterwards at the pariſh aforeſaid in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe, ſo to do.

Breach.

On a promiſſory note drawn by defendant and payable to plaintiff.

And whereas the ſaid *J. H.* on the third day of *June* in the year of our Lord 1767, at the pariſh aforeſaid in the county aforeſaid, made his note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year laſt mentioned, by which note the ſaid *J. H.* promiſed to pay to the ſaid *J. T.* or his order, the ſum of 3 *l.* 5 *s.* on demand, for value received; by reaſon whereof, and alſo by force of the ſtatute in ſuch caſes made and provided, the ſaid *J. H.* became liable to pay the ſaid *J. T.* the ſaid 3*l.* 5*s.* according to the tenor and effect of the ſaid note. And being ſo liable the ſaid *J. H.* in conſideration thereof, afterwards, *to wit*, on the day and year laſt mentioned, at the pariſh aforeſaid in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. T.* to pay him

him the said 3*l.* 5*s.* according to the tenor and effect of the said note. *And also whereas* the said *J. H.* afterwards, *to wit*, on the 10th day of *January* in the year of our Lord 1767, at the parish aforesaid in the county aforesaid, was indebted to the said *J. T.* in the sum of 20*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes before that time sold and delivered by the said *J. T.* to the said *J. H.* at his request; and being so indebted the said *J. H.* in consideration thereof afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *J. T.* to pay him the said 20*l.* when he the said *J. H.* should be thereunto requested. *And also whereas* afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, in consideration that the said *J. T.* had before that time sold and delivered diverse other goods, wares and merchandizes to the said *J. H.* at his request, he the said *J. H.* undertook, and then and there promised the said *J. T.* to pay him so much money for the said goods, wares and merchandizes last above mentioned, as the same at the time of the sale and delivery thereof were reasonably worth when he the said *J. H.* should be thereunto requested. And the said *J. T.* in fact saith, that the said goods, wares and merchandizes last above mentioned, were at the time of the sale and delivery thereof reasonably worth other 20*l.* of like lawful money, *to wit*, at the

Indebitatus assumpsit *for goods sold and delivered.*

Quantum valebant *thereon.*

the pariſh aforeſaid in the county aforeſaid, whereof the ſaid *J. H.* then and there had notice: *Nevertheleſs* the ſaid *J. H.* not regarding his ſaid three ſeveral promiſes and undertakings laſt above mentioned, but deviſing and fraudulently intending to deceive and defraud the ſaid *J. T.* in this behalf, hath not yet paid the ſaid ſeveral ſums of money, in the ſaid three laſt promiſes and undertakings mentioned, nor any part thereof, to the ſaid *J. T.* (although the ſaid *J. H.* afterwards, *to wit*, upon the ſame day and year, and often afterwards, at the pariſh aforeſaid, in the county aforeſaid, was requeſted by the ſaid *J. T.* ſo to do) but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J. T.* of 40*l.* And thereupon he prayeth relief, *&c.*

Breach.

Pledges for proſecuting { *John Doe,* *Richard Roe.*

No bill to be filed till entered on record.

No bill ſhall be filed againſt an officer, attorney, clerk or miniſter of the court, to be called in court, in order to a forejudger, until the bill be actually entered on record, and a number roll actually put to the bill. *Trin.* 21 *Car.* 2.

Of filing a bill againſt an attorney, and calling him in court.

This rule is in a great meaſure diſuſed. You ingroſs the bill on a piece of parchment ſtamped with a double penny ſtamp, which the prothonotary marks as entered, on being paid for the entry, and it is thereby ſuppoſed to be entered, though no number roll is put on the bill; then you carry the bill to *Weſt-*

minſter,

minster, and give it to one of the criers, who calls the defendant in court, for which you pay him 1 *s.* After which you give a rule on the bill with the secondary for the defendant to appear, for which you pay 1 *s.* 4 *d.* *viz.* 1 *s.* for the king's duty, and 4 *d.* for the rule; and then you file the bill in the prothonotary's office, for which you pay 4 *d.* And heretofore it was not necessary to give the defendant any other notice of filing such bill against him than the calling him in court as aforesaid by the crier, which, as all attornies of the court were supposed to be personally present in court during the sitting thereof, was then thought to be sufficient notice. But many attornies having been struck off the roll on forejudgers for want of other notice; and many living in such remote parts of the kingdom, that it was impossible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

Note, get it stamped, &c.

Note, paid in court 6 d. for the rule.

Where a bill shall be filed against an attorney of the court, no forejudger shall be entered for want of appearance, if the action be laid in *London* or *Middlesex*, and the attorney resides within 20 miles of *London*, until four days after notice in writing of filing such bill be given to such attorney or his agent, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides above 20 miles from *London*, or the action be in any other county than *London* or *Middlesex*, no forejudger shall

No forejudger till notice in writing.

ſhall be entered till eight days after ſuch notice ſhall be given in manner as aforeſaid, and a rule to appear; the ſaid days to be excluſive of the days of giving ſuch notice. *Hil.* 11 *Geo.* 2.

Common Pleas.
J. T.
againſt
J. H. gent. one of the attornies, &c.

Notice of a bill being filed.

Take notice, that a bill was this day filed in the prothonotary's office in the Inner Temple *London*, againſt you the defendant *J. H.* at the ſuit of the plaintiff *J. T.* in an action of treſpaſs upon the caſe on ſeveral promiſes; and unleſs you appear to the ſaid bill on *Monday* the * twenty-ſixth day of *January* inſtant, you will be forejudged the court.

E. B.
Attorney for the plt.

23 *Jan.* 1778.
To *J. H.* deft.

Common Pleas. *S. J.* againſt *H. B.*

Take notice, that there is left in the prothonotary's office, in the *Inner Temple*, *London*, a declaration againſt you the deft. at the

* This is the day given by the ſecondary's rule which is incluſive; *ſed vide regul. Hil.* 11 *Geo.* 2 *ſupra*, which ſays the days are to be excluſive.

the suit of the plt. *S. J.* in an action upon the case on several promises for goods sold and delivered, and for the balance of an account which the plaintiff lays to his damage of 100*l.* and unless you plead to the said declaration within four days next after the first day of next *Hilary* term, judgment will be entered against you by default.

To *H. B.* deft. *J. R.* attorney for the plt.

Of forejudging an attorney.

If the defendant appears, he enters his appearance with the prothonotary. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench.*

Memorandum.

Middlesex, *to wit*, Be it remembered, that on the day of in this same term *G. H.* came here into court by *L. R.* his attorney, and exhibited to the justices of our now lord the king of the bench here his bill against *J. B.* gent. one of the attornies of the court of our said now lord the king of the bench here present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words; *to wit*, to the justices of our lord the king of the bench. *Middlesex*, to wit, *G. H.* by *L. R.* his attorney complaineth of *J. B.* gentleman, *&c.* (*the whole bill to*) and thereupon he prayeth relief, *&c.* Pledges for procuting

Forejudger.

ſecuting, *John Doe* and *Richard Roe*; whereupon the ſaid *J. B.* being ſolemnly called came not, therefore he ſtandeth forejudged from exerciſing his office of attorney of this court for his contumacy, *&c.*

You pay the prothonotary 2 *s.* for ſigning the forejudger, and the clerk of the warrants 1 *s.* 4 *d.* for ſtriking the defendant off the roll, and then you may proceed againſt him as againſt a common perſon. And ſo muſt every other perſon; for after a forejudger he cannot be proceeded againſt by bill.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed as in other caſes; but the declaration and iſſue begin with a memorandum in the form aforeſaid, and in both caſes you add the pledges to proſecute at the end of the declaration. You muſt alſo make all your writs, as *Venire facias*, *&c.* returnable on a day certain, *prox. poſt* the general return day.

A writ of privilege for an attorney ſued in the palace court.

GEORGE the third by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the judges of our court of our palace at *Weſtminſter*, and to every of them, greeting. Whereas as well by reaſon of our royal dignity as according to the ancient cuſtom of our court of the bench at *Weſtminſter* from time immemorial hitherto uſed and approved in the ſame, no attorney of our ſaid court of the bench, being bound by oath to follow his office

office for us and our people, ought, nor for all the time aforesaid hath been accustomed, to be taken, arrested, imprisoned, or against his will drawn or compelled to answer any person before any of our justices or officers, or any other secular judges whatsoever, elsewhere or otherwise than by bill, to be filed against him before our justices of our said court of the bench, in or upon any pleas, plaints or demands which do not particularly concern us (pleas or causes of freehold, felony, and appeals only excepted.) And, whereas we have lately received information of the great complaint of *John Rayner* one of the attornies of our said court of the bench, that several ill-disposed persons, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, intend to take, arrest, imprison and disquiet the said *John*, or you have drawn, or do intend by your servants or officers to draw, into pleas or plaints to be levied in our court before you, which do not relate to us, the said *John*, whose constant attendance is required in our said court of the bench, which, should it be permitted, would be in future a very evil example to others, as well as totally take away the jurisdiction, custom, and privilege of our said court of the bench, and tend not only to the manifest detriment, derogation and diminution of our dignity, the jurisdiction of our said court of the bench, and the liberties, privileges, and customs thereof, but also to the great damage of many of our subjects prosecuting and defending suits

ſuits in our ſaid court of the bench, and to the grievance of the ſaid *John*, and to the great detriment of his clients. Wherefore the ſaid *John* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is juſt and reaſonable ſhould be done for the ſaid *John*, and likewiſe that the juriſdiction, honor, cuſtom, liberty and privilege of our ſaid court of the bench ſo immemorially uſed and approved ſhould be inviolably preſerved, do command and firmly enjoin you, and each and every of you, that you and each and every of you do wholly deſiſt from taking, arreſting, impriſoning or in any wiſe moleſting the ſaid *John* at the ſuit of any perſon, and from proceeding in any plaint or plea whatſoever depending in our ſaid court before you, any or either of you, againſt the ſaid *John*, by whomſoever levied or to be levied, by whatſoever name the ſaid *John* be therein called (pleas and cauſes of freehold, felony, and appeals only excepted.) And if you, or any of you, have taken the ſaid *John* before the receipt of this writ againſt the cuſtom, liberty, and privilege aforeſaid, that then you, and each and every of you, immediately diſcharge the ſaid *John* from that arreſt, and that you inform the ſaid parties plaintiffs in the ſaid plaints from us, that they may proſecute their pleas and plaints aforeſaid by filing their reſpective bills therein, againſt the ſaid *John* before our juſtices of the ſaid court of the bench, according to the cuſtom thereof from time immemorial, uſed

and approved in the same, to obtain justice there, if they shall think it expedient so to do Witness Sir *William De Grey*, knight, at *Westminster*, the 13th day of *February*, in the 18th year of our reign.

Another where an attorney was arrested by Capias ad respondendum. *Q.*

GEORGE the third, &c. To the sheriffs of *London*, greeting. Whereas, according to the custom of our court of the bench at *Westminster* hitherto used and approved of in the same, the attornies of our said court of the bench, whilst they are prosecuting and defending suits and actions therein for their clients, ought not, nor have they for time immemorial been used, to be compelled to answer before us, or any of our justices or officers, or any other secular judges whatsoever, upon any pleas, plaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted) save only before our justices of our said court of the bench, by bill exhibited in our said court, and not by original writ. And we have lately received information by the complaint of *A. B.* one of the attornies of our said court of the bench, prosecuting, following, and defending suits and actions in our said court for his clients, that several ill-disposed persons, intending to disquiet the said *A. B.* have sued and prosecuted him by original writ or writs issued out of our high court of *Chancery*, returnable before our said justices of the bench, and by writ or writs of *Capias ad respondendum* issued forth thereupon, and have caused him the said *A. B.* to be

be arrested and detained in your custody, by virtue of one or more of the said writs of *Capias ad respondendum*, in suits which do not relate to us, or in pleas of freehold, felony, or appeals; whereby the said *A. B.* is unable to attend his said office as an attorney, upon the said several suits and actions depending in our said court of the bench, which, if it is permitted, will manifestly take away and be in derogation and diminution of the liberties and privileges of the said *A. B.* and to the great detriment of the said *A. B.* and his clients; and because we are willing that the jurisdiction, privileges, and customs, for so long time used and approved of in our said court of the bench, should be inviolably observed, We command you, that you desist from taking the said *A. B.* into your custody upon any of the said writs of *Capias ad respondendum*; and if the said *A. B.* be detained in your custody by any such writ or writs of *Capias ad respondendum*, and for no other cause, that then you supersede and suffer him to go at large, as you will answer the contrary at your peril; and that you inform the party or parties, plaintiff or plaintiffs in the suit or suits, that he, she, or they may prosecute his, her, or their said suits, before our justices of our said court of the bench, by bill or bills to be exhibited to the said justices against the said *A. B.* if he, she, or they think it expedient so to do. Witness, *&c.*

This writ must be engrossed on a four sixpenny stampt piece of parchment, and signed by

by the clerk of the warrants, which he will do *gratis*, (unleſs the attorney is in arrear for termages) and alſo by the prothonotary, *gratis* too; ſealing 7 *d.*

Then deliver the writ to the ſecondary of the court, where the action is brought, whoſe fee for allowing ſame is 2*s.* 8*d.* for *Superſedeas* and ſearching office 1 *s.* 4 *d.* If attorney is in cuſtody, the *Superſedeas* muſt be ſerved on officer in whoſe cuſtody he is.

Form of *Superſedeas* to the palace court.

"TO all and every the officers of his majeſty's palace court.

If arreſted, diſcharge, if not, forbear to arreſt *J. R.* gentleman at the ſuit of *B. G.* he having this day allowed his writ of privilege, as one of the attornies of his majeſty's court of common bench at *Weſtminſter*; dated the day of *November*, 1777.

R. S.

A certificate of the allowance of the writ of privilege, the ſecondary will give you on demand.

Form of certificate of the allowance of writ of privilege.

To all, &c. as before.

This is to certify that *J. R.* gent. hath this day, &c. as in *Superſedeas.*

When the proceſs for arreſting is returned by the officer, that defendant is privileged,

the writ of privilege is ſpent, and another writ muſt be allowed if defendant wiſhes to avail himſelf of his privilege again, and ſo *toties quoties*, for it will ſerve him but in one action.

No attorney to be privileged in any ſuit, unleſs it appears on the face of the declaration that he ſues for fees, and no priviledge, where he is defendant.

An attachment againſt an attorney or any other, for a contempt, is in this form:

An attachment for a contempt.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To the ſheriff of *Middleſex*, greeting. Attach *L. J.* gentleman, one of the attornies of our court of the bench [*or* A. B. *any other perſon*] ſo that you may have his body before our juſtices at *Weſtminſter* on next after to anſwer us of and upon ſuch things as on our behalf ſhall be then and there objected againſt him; and have there this writ. Witneſs, &c.

This writ is obtained on rule of court, which muſt be taken to clerk in court or from office, who will thereupon make out attachment, for which he charges 13*s.* 4*d.* this writ is taken to ſheriff of county, in which party to be attached reſides; who will make out warrant for 2*s.* 6*d.*

Affidavit of ſervice of a rule with an allocatur of coſts, and a demand thereof, on or about ſuch a day is ſufficient for an attachment for non-payment of them. 2 *Wilſ.* 227.

Bill

Bill of COSTS on proceedings against an ATTORNEY.

	Out of pocket			Agent			Attorney		
Warrant and instructions.	0	0	0	0	2	2	0	4	4
Searching of what court defendant admitted.	0	0	0	0	1	8	0	3	4
Drawing bill from 20 at one shilling per folio.	0	0	0	0	10	0	1	0	0
Engrossing at 4 *d.* per folio parchment and duty.	0	1	0	0	4	4	0	7	8
Calling defendant into court.	0	1	0		1	0	0	1	0
Attending for that purpose.	0	0	0		1	8	0	3	4
Rule for appearance and duty.	0	1	11		2	8	0	3	6
Entring and filing bill.	0	12	4	0	12	4	0	12	4
Notice of bill filed, copy and service.	0	0	0	0	1	6	0	3	0
Searching for appearance.	0	0	0	0	1	8	0	3	4
Engrossing declaration at 4 *d.* per sheet and duty to deliver.									

N. B. *The rest of the bill runs the same, and the items therein for fees and disbursements, are usual in other suits in this court.*

Of writs of Habeas corpus cum causa.

Writs of Habeas corpus cum causa.

THEY are used for two purposes; *First*, To remove causes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other prison into the prison of the *Fleet*.

As to the first, many abuses having been committed in the obtaining and prosecuting such writs, several laws have been made for remedying the same.

Before the statute of 43 *Eliz. c.* 5. it was usual for a defendant in an action commenced in an inferior court, to suffer such cause to be proceeded in till issue joined, the jury sworn, and evidence given for the plaintiff, before he would deliver into court his writ of *Habeas corpus cum causa*, or other writ which he had before sued out for removing the said cause into this or some other of the courts at *Westminster*; and this done merely to put the plaintiff to as much expence as possible, and to come at a knowledge of his evidence. But by that statute it is enacted, That no writ of *Habeas corpus*, or other writ for the removing a cause out of any inferior court, shall be received or allowed by the judge or officer to whom the same shall be delivered (but that he may proceed in such cause as if no such writ had been delivered to him), except the writ be deliver-

Cause not to be removed by Habeas corpus, *unless delivered before the jury sworn.*

ed

ed before the jury, which is to try the iſſue, have appeared, and one of them be ſworn to try the cauſe.

Nor unleſs delivered before iſſue joined.

And by the ſtatute 21 *Jac.* 1. *c.* 23. no writ of *Habeas corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, *&c.* ſhall be allowed by the ſteward, judge, *&c.* of ſuch court, unleſs delivered before iſſue or demurrer joined in ſuch cauſe, ſo as the ſaid iſſue or demurrer be not joined within ſix weeks after the arreſt or appearance of the defendant to ſuch action or ſuit.

If carried back by Procedendo *not to be removed again before judgment.*

And if any action commenced in ſuch court of record in any city, liberty, *&c.* ſhall be removed by any writ or proceſs, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the ſaid action ſhall never afterwards be removed or ſtayed before judgment, by any writ out of any court whatſoever.

Cauſe not concerning freehold, and not exceeding 5 l. not to be removed.

And if in any action or cauſe not concerning freehold, inheritance, title of lands, leaſe or rent commenced in any ſuch court of record, it ſhall appear or be laid in the declaration, that the debt, damages or thing demanded doth not exceed 5*l.* then ſuch action ſhall not be ſtayed by any writ whatſoever, other than writ of error or attaint.

To what courts this extends.

But this act is only to extend to ſuch courts of record in cities, liberties, *&c.* and for ſo long time only as there ſhall be an utter barriſter of three years ſtanding, ſteward, *&c.* or judge, or recorder of ſuch inferior court, or aſſiſtant to ſuch judge of the ſame

inferior court, as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The subtilty of ill-designing people in time got over, and rendered ineffectual this act. A vexatious defendant sued in an inferior court for a debt under 5 *l.* perhaps not 20 *s.* would set up a fictitious action against himself for a pretended demand of above 5 *l.* and then bring a *Habeas corpus cum causa*, which would take in both actions, and by this contrivance procure the smallest action to be removed into a superior court, whereby a plaintiff, that could not bear the expence of such superior court, has been obliged to submit to the loss of his just demands.

Inferior courts may proceed in actions not exceeding 5 l. *though there be other actions for above* 5 l.

But by an act made 12 *Geo.* I. *c.* 29. *f.* 3. 21 *Geo.* II. *c.* 3. the judges of such inferior courts, as are described in the statute 21 *J.* I. may proceed in such actions, &c. as are therein specified, which appear or are laid not to exceed 5 *l.* altho' there may be other actions against such defendants wherein the plaintiffs demands shall exceed 5 *l.*

Habeas cor. *directed to any sheriff (except of* Lond. *or* Mid.) *to be returnable on a day certain in term.*

A writ of *Habeas corpus cum causa ad faciendum & recipiendum*, directed to any sheriff (other than of *London* or *Middlesex*) must be returnable in court at a day certain in term, and not be made returnable immediately or in the vacation. *Mich.* 1654.

If to the sher. of Lond. *or* Mid. *may be*

But such writ of *Habeas corpus* directed to the sheriffs of *London*, or to the sheriff of *Middlesex*, may be granted in term or vacation

tion returnable immediately. *Same rule. Vide postea, fol.* 314.

returnable immediately.

Where a writ of *Habeas corpus* made returnable immediately is directed to any sheriff, he ought to make his return the same day that the writ is delivered, and to bring the body immediately, as required by the writ. *Same rule.*

And the sheriff must return such writ the same day.

If upon the return of the *Habeas corpus*, the prisoner is returned charged with a process out of the *King's Bench* or *Exchequer*, and with process out of the *Common Pleas*, he may be committed with those causes. *Same rule.*

Prisoner charged with process out of this court, may be committed, tho' charged with process out of K. B. *or* Exc.

And if the prisoner upon a *Habeas corpus cum causa* be returned charged with process out of the *Common Pleas*, though it be returnable at a future day, he may be committed with this cause. *Same rule.*

If charged with process out of this court, returnable at a day to come, may be committed.

All writs of *Habeas corpus* returnable in court, must be made returnable at a day certain. *Mich.* 1654. *Hil.* 13, 14 *Car.* 2.

Return of a H. C. must be at a day certain.

If a person in custody of any sheriff or gaoler, charged with process issuing out of the *King's Bench* or *Exchequer*, and not with any process out of this court, be minded to be turned over to the prison of the *Fleet*, he must procure himself to be charged with some process issuing out of the court of *Common Pleas* before he bring his writ of *Habeas corpus*, that he may be returned charged therewith, otherwise he cannot be turned over. See *Barnes* 400.

Of removing a prisoner into the Fleet.

The form of the writ of Habeas corpus cum causa.

A H. C. *to the sheriff of* Mid. *ret. immediately before a judge.*

GEORGE the third, *&c.* To the sheriff of *Middlesex*, greeting. We command you, that you have the body of *T. M.* detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said *T.* before Sir *William De Grey*, knight, our chief justice [or before Sir *Henry Gould*, knight, one of our justices] of the bench, at his chambers in *Serjeants Inn* in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said chief justice [or justice] shall then and there consider of him in this behalf; and have there this writ. Witness, *&c.*

If the *Habeas corpus* be returnable before the chief justice, any other judge of the court may commit the defendant thereon to the *Fleet*.

The

The expences of this writ, allowance, &c. *are.*

	l.	*s.*	*d.*
Stamp duty —— ——	0	5	0
Judge figning —— ——	0	4	0
Prothonotary figning ——	0	1	4
Seal —— ——	0	0	7
To the fheriff of *Middlefex* for the allowance ——	0	4	8
For the return thereof, if but one writ —— ——	0	2	4
For every writ more againft the defendant ——	0	2	4
For a warrant to the bailiff to conduct the prifoner before a judge or into court	0	2	4
And if the defendant is in prifon, then for a warrant to the gaoler to deliver him to the bailiff ——	0	2	4
To the bailiff for bringing him up	0	10	0

Befides the fees at the judge's chambers, or in court.

A Hab. corp. to the palace court.

GEORGE the third, *&c.* To the judges of our court of our palace at *Weftminfter*, and to every of them, greeting. We command you, that you have the body of *J. C.* detained in our prifon under your cuftody, as it is faid, by whatfoever name he may be called in the fame, together with the day and caufe of the taking and detaining the faid *J. C.* before Sir *William De Grey*, knight, our chief juftice of the bench, at his chambers fituate in *Serjeants Inn* in *Chancery Lane*,

Lane, immediately after the receipt of this writ, to do and receive what our ſaid chief juſtice ſhall then and there conſider of him in this behalf; and have there this writ. Witneſs, *&c.*

	l.	s.	d.
The allowance at the marſhal's court for the firſt cauſe, is	0	4	8
For every cauſe after the firſt -	0	1	0
[If bailed] the ſtamp duty ——	0	2	0
Judge's clerk taking the bail —	0	0	6

Ha. cor. *to an inferior court within* 5 *miles of* London *may be ret. immediately.*

Writs of *Habeas corpus* directed to the inferior courts of *London*, *Weſtminſter*, and *Southwark*, and other courts within five miles of *London*, may be returnable immediately. *Mich.* 1654. and *Hil.* 13 *&* 14 *Car.* 2. *Vide antea, fol.* 310, 311.

Bail taken in abſence of plt. or his attorney to be de bene eſſe; *and if no exception within* 20 *days to be filed.*

If bail be taken in the abſence of the plaintiff or his attorney, the ſame is to be taken *de bene eſſe*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed. *Same rules.*

If no exception, and bail not filed within 4 *days after the* 20, *a* Procedendo.

And if no exception be taken to bail put in on a *Habeas corpus* before a judge at his chamber, then unleſs the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same rules.*

Where

Where bail is taken of a perſon in cuſtody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if aſſented to; and for that purpoſe the prothonotary's fees are to be depoſited; but the priſoner is not to be diſcharged until the bail be aſſented unto, or the plaintiff over-ruled in open court to accept the ſame upon examination. *Same rules.*

Bail taken of priſoners to be delivered to prothonotary to be filed. But priſoner not to be diſcharged till bail be aſſented to, &c.

In all caſes where bail was put in in the inferior court, if the cauſe be removed by *Habeas corpus* into this court, bail muſt be put in here on the removal, though the debt be under 10 *l.* except the defendant be an heir, executor or adminiſtrator, *&c.*

Bail in all caſes of removal where bail below, except.

When the *Habeas corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney muſt get an order from one of the judge's clerks for a *Procedendo*, unleſs the defendant put in bail by the time limited by the order, *viz.* in term time within four days, and in vacation within ſix days after notice of the rule, a copy of which muſt be ſerved on the defendant's attorney.

Rule for Procedendo *unleſs bail in 4 days in term, and in 6 days in vacation.*

If the plaintiff's attorney diſlike the bail, he ſerves the defendant's attorney with a like order for a *Procedendo*, unleſs better bail be put in within four days.

Rule for better bail.

If this exception to the bail be in vacation-time, 'tis uſual (though I don't ſee to what purpoſe) to juſtify within the four days before a judge at his chambers, for which you pay 2 *s.* and then the bail muſt juſtify the firſt day of the next term in court.

Of juſtifying.

The

The defendant's attorney must give the like notice to the plaintiff's attorney of the putting in bail, and justifying, as in other cases.

There is no limited time for the plaintiff's getting an order for a *Procedendo* unless bail be put in, and has been done after two terms; but if the defendant had put in bail in time, and the plaintiff had not declared in two terms, the cause had been out of court. *Barnes* 90, 91.

Causes removed from cities and towns where the judges seldom go, to be laid in the county wherein, &c.

If a cause be removed by *Habeas Corpus* out of the courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield* or *Pool*, or other counties where the judges of *Nisi prius* seldom go, if the action be transitory, it must be laid in the county of *Kent*, *Southampton*, *York*, *Stafford* or *Dorset*, or other county where such city or town lies, and the recognizance is to be taken accordingly. *Mich.* 1654.

A Habeas corpus ad satisfaciendum *to the warden of the* Fleet *to bring a prisoner up to be charged in execution.*

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the warden of our prison of the *Fleet*, greeting. We command you, that you have before our justices at *Westminster*, on *Wednesday* next after three weeks of the Holy *Trinity*, the body of *B. C.* late of *London*, stationer, detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *S. T.* of 30 *l.* for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *S.* as for costs and charges by him

about

about his suit in that behalf expended, whereof the said *B.* is convicted; and further to do and receive what our said court shall then and there consider of him in this behalf; and have there, *&c.*

Clift's Entr. 371.

Fees pay.

	l.	s.	d.
At the *Fleet* —— ——	0	9	4
In court to the secondary ——	0	9	0
Cryers —— ——	0	2	0
Tipstaff bringing up the prisoner	0	10	0
If you draw up the rule you pay the secondary more ——	0	2	6
And at the *Fleet* —— ——	0	2	6

A *Habeas corpus ad satisfaciendum* may issue to the warden of the *Fleet*, or the keeper of any inferior prison of a liberty or franchise, returnable in court at a day certain, and the number roll of the judgment to be indorsed upon the writ by the attorney who sues it out, and such writ shall be a good cause of detainer. *Mich.* 1654.

Number roll to be indorsed.

If a defendant be brought into court upon a *Habeas corpus ad satisfaciendum*, he can be charged in execution upon that judgment only, on which the *Habeas corpus ad satisfaciendum* issued; and if there be several judgments, on which he is to be charged in execution, there be a writ of *Habeas corpus* on each judgment.

On several judgments there must be separate writs of Habeas corpus ad satisfaciendum.

GEORGE the third, *&c.* To the marshal of our *Marshalsea* before us, greeting.

Habeas corpus ad satisfaciendum di-

rected to the marshal of the King's Bench.

ing. We command you, that you have before our justices at *Westminster*, on *Friday* next after fifteen days of Saint *Martin*, the body of *J. N.* Esq; in our prison, under your custody detained, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name he is called in the same, to satisfy *L. M.* widow, of 120*l.* which the said *J.* heretofore, *to wit*, on the 7th day of *October* in the year of our reign before Sir *Robert Eyre*, knt. late chief justice of our court of the bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane*, *London*, acknowledged to owe to the said *L.* to be levied of his lands and chattels, as by the said recognizance in our court of the bench aforesaid remaining of record plainly appears. And whereupon it is considered in our said court, that the said *L.* have execution against the said *J.* of the said 120*l.* by the default of the said *J.* And whereupon our sheriff of *Middlesex* returned to our justices at *Westminster* from the day of Saint *Michael* in three weeks last past, that the said *J.* has no goods or chattels in his bailiwick, whereof he could cause to be made the said 120*l.* or any part thereof; and further to do and receive what our said court shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

Sci. fa.

Procedendo *to the palace court on a* Habeas corpus.

GEORGE the third, &c. To the judges of our court of our palace at *Westminster*, and to each of them, greeting. Whereas we by our writ lately commanded you,

you, that you ſhall have before Sir *John Eardly Wilmot*, knt. our chief juſtice of the bench, at his chamber ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of the ſaid writ, the body of *R. W.* detained in our priſon under your cuſtody, as it is ſaid, together with the day and cauſe of the taking and detaining him, by whatſoever name the ſaid *R.* is called, to do and receive what our ſaid chief juſtice ſhould conſider of him in that behalf; yet for certain cauſes in this behalf ſpecially moving our juſtices of the bench aforeſaid at *Weſtminſter*, We command you, and each of you, that in all ſuits and plaints againſt the ſaid *R.* at the ſuit of *J. W.* in our court before you moved or depending, you proceed with effect according to the law and cuſtom of *England* and the court aforeſaid, notwithſtanding any writ lately directed to you to the contrary. Witneſs, *&c.*

The like in another form.

GEORGE the third, *&c.* To, *&c.* Whereas, *&c.* (*reciting the writ of* Habeas corpus): We command you, that in all and ſingular pleas and plaints in our court before you, againſt the ſaid *L.* moved or depending, you proceed with effect, notwithſtanding our ſaid writ of *Habeas corpus* to the contrary lately thereupon directed to you. Witneſs, *&c.*

On a writ of Habeas corpus *returnable in court.*

GEORGE the third, *&c.* To, *&c.* Whereas we by our writ lately commanded you, that you ſhould have before our juſtices

ſtices at *Weſtminſter*, on *Wedneſday* next after fifteen days of Saint *Martin*, the body of *C. H.* detained in our priſon under your cuſtody, as it was ſaid, by whatſoever name he was called, together with the day and cauſe of the taking and detaining the ſaid *C.* to do and receive what our ſaid juſtices ſhould conſider of him in this behalf; yet for certain cauſes in this behalf moving our ſaid juſtices at *Weſtminſter*, We command you, that in all and ſingular ſuits and plaints, *&c. as before.*

As the *Habeas corpus* removes all cauſes againſt the defendant in the inferior court, the *Procedendo* carries back all the cauſes that were removed.

Of PRISONERS.

Where defendant is in cuſtody for want of bail.

Plaintiff before end of next term after return of the writ may declare againſt ſuch priſoner.

A Man having cauſe of action againſt a priſoner was formerly obliged to bring him into court by a *Habeas corpus*, and then declare againſt him; but by the *Stat.* 4 *&* 5 *W. & M.* it is enacted, That if any perſon be taken or charged in cuſtody at the ſuit of any other perſon, upon any writ or writs iſſuing out of any of the courts of *Weſtminſter*, and impriſoned for want of ſureties for his appearance, the plaintiff in ſuch writ may, before the end of next term after ſuch writ ſhall be returnable, declare againſt ſuch priſoner in the court out of which ſuch writ or writs ſhall iſſue, whereupon ſuch pri-

ſoner ſhall be taken, or charged in cuſtody, and may cauſe a true copy of the declaration to be delivered unto ſuch priſoner, or to the gaoler or keeper of the priſon in whoſe cuſtody ſuch priſoner ſhall be, to which declaration the ſaid priſoner ſhall appear and plead; but if he ſhall not appear thereto, the plaintiff ſhall in ſuch caſe have judgment as if the priſoner had appeared and refuſed to plead.

And have judgment in default of appearance and plea.

Where defendant remains in cuſtody of ſheriff for want of bail, plaintiff muſt declare againſt him in cuſtody of the ſheriff. *Barnes* 400.

No copy of a declaration ſhall be delivered to any priſoner, until after the proceſs upon which ſuch priſoner ſhall be taken or charged in cuſtody be returnable. *Paſc.* 5 *W.* & *M.*

Declaration not to be delivered to priſoner till after the return of the writ.

A priſoner in cuſtody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad ſatisfaciendum*, whilſt he was in cuſtody of the ſheriff of *Middleſex* on an attachment for a contempt of this court, has been held irregular.

Priſoner in cuſtody for a contempt not to be charged with a declaration or execution without leave.

No rule ſhall be given for the defendant in cuſtody to appear and plead to any declaration againſt him, until an affidavit be filed with the proper ſecondary of the delivery of the copy of ſuch declaration, and of the time when, and the perſon to whom the ſaid copy was delivered; and a copy of the ſaid affidavit ſhall be produced to the pro-

No rule to plead till affidavit of the delivery of the declaratin.

thonotary before judgment figned together with a certificate from the proper officer, that no appearance is entered with him. *Paf.* 5 *W.* & *M.*

Declaration delivered before Menfem pafchæ, *or* Craftinum animarum, *if defendant appears within* 10 *days after the end of the refpective term, he may imparl to the next term. Unlefs.*

If a copy of a declaration be delivered before *Menfem pafchæ*, or *Craftinum animarum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Eafter* or *Michaelmas* term refpectively, judgment may be entered againft him upon fuch certificate, if rules have been given; but if he does enter his appearance as aforefaid within ten days after fuch term, he fhall imparl until the next term, unlefs the action be in *London* or *Middlefex*, and the defendant be in prifon within forty miles of the cities of *London* or *Weftminfter*; and then, though the prifoner doth appear within ten days after the end of the term, he fhall plead two days before the effoin-day of the next term; and in default thereof, rules having been given, judgment may be entered againft him, as aforefaid. *Same rule.*

If the declaration be delivered on or after Menf. paf. *or* Craft. anim. *or in* Hil. *or* Trin *term, and deft. appears 2 days before the effoin-day of the next term, he may imparl to the next term.*

If the copy of the declaration be delivered on or after *Menfem pafchæ*, in *Eafter* term, or *Craftinum animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff fhall thereupon give a rule to appear and plead, if the defendant enters his appearance two days preceding the effoin-day of the next term, he fhall imparl until the next term; but if he fhall not appear

4 within

within that time, judgment may be entered againſt him, as aforeſaid. *Same rule.*

If declaration delivered before eſſoin-day of the 2d term, defendant to plead without imparlance.

If the writ be returnable in one term, and a copy of the declaration be delivered before the eſſoin-day of the next term, the plaintiff in ſuch declaration may give a rule to appear and plead; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered againſt him. *Same rule.*

If no declaration before the end of the 2d term, and affidavit filed, &c. defendant to be diſcharged by Superſedeas.

If the declaration be not entered or left in the office before the end of the next term after the return of the writ or proceſs (by which the defendant ſhall be taken or charged in cuſtody), and an affidavit made and filed in manner aforeſaid before the end of twenty days after ſuch term (*Eaſter* term excepted, and within ten days after *Eaſter* term), the priſoner ſhall be diſcharged, upon entering his appearance with the proper officer, by writ of *Superſedeas* made by him, according to the ancient practice of this court. *Same rule.*

Gaoler concealing a declaration liable to an attachment.

If any gaoler or keeper of any priſon, having received a copy of a declaration againſt any priſoner in his cuſtody, ſhall ſuppreſs the ſame, or not deliver it forthwith to ſuch priſoner, an attachment ſhall be entered againſt him. *Same rule.*

Of declaring againſt a priſoner in the Fleet.

It ſhall be lawful for any perſon who ſhall have cauſe of action againſt any priſoner of the *Fleet*, after filing or entering a declaration, to deliver a copy to ſuch defendant in any perſonal action, or to the turnkey or porter of the *Fleet* priſon, and after a rule

given

Eight days time to plead. given to plead, to be out at eight days at most, after delivery of such copy of the declaration, and affidavit made of such delivery, to sign judgment against such defendant, as if he had been charged at the bar of the *Common Pleas*. *Stat.* 8 & 9 *W.* 3. *c.* 27. §. 13.

Common Pleas.

E. T. against *W. W.* late of, &c.	In a plea of trespass on the case.

Affidavit of the delivery of a declaration against a prisoner. *R. R.* of, &c. gent. maketh oath, That he this deponent on the 12th day of *February* last, at the lodge of the *Fleet* prison, delivered a declaration in this cause to *W. Manning*, one of the turnkeys of the said prison, a true copy of which declaration is hereunto annexed. And this deponent also saith, that the said *W. Manning* did then acknowledge to this deponent, that the defendant *W. W.* was at that time a prisoner in the said prison of the *Fleet*.

Sworn, &c. *R. R.*

When declaration to be enter'd with prothonotary before delivered. When the defendant is in the *Fleet*, the declaration must be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery when the defendant is in any other prison. But see 8 *Mod.* 227.

In an action on a joint bond where one de- In an action of debt against two obligors on a joint bond conditioned for payment of money, one of the defendants was arrested, and

and continued in custody for want of bail, the other obligor could not be arrested, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in custody would be discharged for want of being declarged against this term, and the other defendant could not be outlawed by that time. But the motion was denied. *Fisher* v. *Tucker & al. Hil.* 2 *Geo.* 2. *Pract. Reg. C.P.* 327.

fendant could not be arrested, time to declare denied.

If any plaintiff shall declare against any defendant in custody of the warden of the *Fleet*, or of any sheriff or other officer, by virtue of any process of this court, and shall not further proceed to judgment in three terms after such declaration delivered inclusive of the term in which the declaration shall be delivered, the defendant having appeared, the defendant may be discharged out of custody by *Supersedeas*, to be allowed by one of the justices of this court, if cause shall not be shewn by the plaintiff or his attorney, why such plaintiff had not proceeded before that time to judgment as aforesaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of such notice. *Pas* 8 *Geo.* 1.

If plaintiff proceed not to judgment in 3 terms inclusive after declaration delivered, defendant to be discharged.

And in case any plaintiff having obtained judgment in this court against any defendant a prisoner, as aforesaid, shall not charge such defendant, so remaining a prisoner, in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, such de-

If plaintiff does not charge defendant in execution within 2 terms inclusive after judgment, defendant may be discharged.

 fendant

fendant ſo remaining in priſon may be diſcharged out of cuſtody, where he ſhall be ſo detained, by *Superſedeas*, to be allowed as aforeſaid, unleſs cauſe ſhewn on like notice and oath. *Same rule.*

Defendant ſurrendering in diſcharge of his bail before declaration delivered to be declared againſt within two terms, or diſcharged.

If any defendant ſhall render himſelf, or be rendered to the *Fleet* priſon, in diſcharge of his bail, at the ſuit of any plaintiff, where no declaration has been delivered, unleſs the plaintiff ſhall declare againſt ſuch defendant within two terms after ſuch render, ſuch defendant may be diſcharged out of cuſtody, by *Superſedeas* to be allowed by one of the juſtices of this court, if cauſe be not ſhewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of ſuch notice. *Same rule.*

Plaintiff not obliged to charge priſoner in execution, ſecond * term after judgment, if *he brings writ of error.* 2 *Wilſ.* 380. nor while a treaty ſubſiſts between the parties. 3 *Wilſ.* 455.

If declaration delivered, or judgment had before render, plt. to proceed to judgment in 3 terms after render, and

But where a declaration has been delivered, or judgment had againſt ſuch defendant ſo rendering himſelf, or being rendered, before ſuch render, unleſs the plaintiff ſhall proceed to judgment upon ſuch declaration delivered within three terms after ſuch render (the defendant having appeared) and charge

* Plaintiff ſhall have every day in ſecond term, to charge priſoner. 2 *Wilſ.* 380.

charge ſuch defendant in execution within two terms after ſuch judgment obtained, the defendant may be diſcharged in like manner by *Superſedeas*, unleſs cauſe ſhewn upon the like notice and affidavit. *Same rule.*

charge deft. in execution within 2 terms after judgment or deft. to be diſcharged.

No copy of a declaration delivered at the *Fleet* priſon againſt any priſoner there, ſhall be ſufficient charge to hold ſuch priſoner to bail, or to retain ſuch priſoner in cuſtody for want of bail, unleſs an affidavit that the plaintiff's cauſe of action amounts to ten pounds or upwards be firſt made, and filed in the proper prothonotary's office, and an indorſement made by the ſaid prothonotary or his deputy upon ſuch copy of a declaration, ſignifying the ſum of money ſpecified in ſuch affidavit, for which ſum ſo indorſed bail ſhall be required, and no more. *Hil.* 8 *Geo.* 2.

Copy of declaration not ſufficient to charge priſoner in cuſtody, unleſs affidavit be made that cauſe of action is 10l. or upwards.

If a defendant arreſted by proceſs iſſuing out of the court of *King's Bench*, and in cuſtody for want of bail, remove himſelf by *Habeas corpus* to the *Fleet* priſon, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the proceſs upon which the defendant was arreſted; but if the declaration comes in as a new charge againſt a priſoner in cuſtody, at the ſuit of another plaintiff, there the above rule muſt be obſerved. See *Rep. & Caſ. of Pract. C. P.* 144. *Barnes* 75. *Pract. Reg. C. P.* 330.

The plt. at whoſe ſuit the priſoner was arreſted need not make ſuch affidavit.

A prisoner discharged for want of prosecution, if afterwards arrested on an action on the judgment, a common appearance shall be taken.

Where a prisoner in the *Fleet*, or other gaol or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof, by *Supersedeas* for want of prosecution, and such prisoner is afterwards arrested or detained in custody by action of debt brought upon the judgment obtained in the cause, wherein such prisoner was so discharged, or ordered to be discharged, a common appearance shall be accepted for the defendant, in such action of debt upon the judgment. *Hil. 8 Geo. 2. Vide antea.*

Def discharged for want of proceeding to judgment may be afterwards taken in execution; aliter *if discharged for want of being charged in execution.*

Where a defendant is discharged out of custody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant shall not be discharged; but if the plaintiff has proceeded to judgment, and the defendant be discharged out of custody for want of being charged in execution, the defendant is totally discharged, and cannot afterwards be taken in execution on that judgment. *Barnes* 376, 377.

A prisoner on contempt not entitled to a day rule.

A prisoner charged with an attachment for a contempt, which is a criminal prosecution, is not intitled to a day rule.

Prisoner arrested by process of B. R. *removed into the* Fleet, *how to be proceeded against, or discharged.* See 3 *Barnes* 384, 385.

If a defendant in custody on a *King's Bench* process be committed by this court, or a judge of this court, to the prison of the *Fleet*, before a declaration delivered, the plaintiff cannot declare against him in the *King's Bench*, without removing him to the prison of that court by *Habeas corpus ad respondendum*; but he may declare against him in

in this court; and for default of declaring in due time, this court may discharge the defendant out of custody. After a declaration delivered, the action must be carried on in that court, in which the plaintiff declared, though the defendant be removed to the prison of another court; and the *Supersedeas*, for default of subsequent proceedings, must issue out of that court in which the plaintiff declared.

How to proceed when a defendant after being served with copy of process, and before declaration becomes a prisoner.

Where a defendant was served with copy of process, but before declaration delivered became a prisoner in the *Fleet*, and the plaintiff entered an appearance for him, pursuant to the statute, and left a declaration in the office, and gave him notice of it, the court set aside the proceedings, and held, that the declaration ought to have been delivered at the *Fleet*.

Supersedeas *on putting in good bail.*

GEORGE the third, &c. To the sheriff of *L.* greeting. Whereas *S. S.* is detained in our prison under your custody, by virtue of our writ returnable, before our justices at *Westminster*, on, &c. [*the return*] to answer *C. C.* in a plea of trespass, and also in a plea of trespass on the case, to the damage of the said *C.* of 20*l.* And because it sufficiently appears to our said justices at *Westminster*, that the said *S.* hath appeared in our said court, and found sufficient bail to answer the said *C.* in the plea of trespass on the case aforesaid; therefore we command you, that if the said *S.* is detained in our said prison under your custody, by occasion of the said action,

action, and no other, then you permit him to go at large, as you will anſwer the contrary at your peril. Witneſs, &c.

The like to a ſteward of a liberty.

GEORGE the third, &c. To chief ſteward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our ſheriff of *Suffolk*, that he ſhould take *J. L.* gent. if he might be found in his bailiwic, and keep him ſafely, ſo that he might have his body before our juſtices at *Weſtminſter*, at a certain day in the ſaid writ ſpecified, to anſwer *W. L.* gent. in a plea of treſpaſs, and alſo in a certain plea of treſpaſs on the caſe upon promiſe, to the damage of the ſaid *W.* of 300*l.* and you, by virtue of a certain warrant upon our ſaid writ by the ſheriff of the county aforeſaid thereupon directed to you, took the ſaid *J.* within the ſaid liberty, and ſtill detain him in our priſon under your cuſtody; *Yet* becauſe the ſaid *J.* after the taking aforeſaid found ſufficient bail before our ſaid juſtices at *Weſtminſter*, to anſwer the ſaid *W.* in the pleas aforeſaid; therefore we command you, that if the ſaid *J.* by the occaſion aforeſaid, and no other, is detained in our priſon under your cuſtody, then without delay you cauſe the ſaid *J.* to be diſcharged out of the ſaid priſon, and permit him to go at large. Witneſs, &c.

Superſedeas *on entering a common appearance.*

GEORGE the third, &c. To the ſheriff of *W.* greeting. Whereas *A. B.* is detained in our priſon under your cuſtody, by virtue

virtue of our writ of *Capias* issued out of our court before our justices at *Westminster*, returnable before our said justices, on, &c. [*the return*] to answer C. D. in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said C. 30*l.* whereby 20*l.* bail was directed to be taken: But because it sufficiently appears to our said justices at *Westminster*, that the said *A.* has appeared by *W. R.* his attorney to answer the said C. in the plea aforesaid, we command you, that if the said *A.* be detained in our prison under your custody, by virtue of the said writ, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

Supersedeas *for want of prosecution, where the deft. was tak n by the late sheriff.*

GEORGE, the third, &c. To the sheriff of the city of *Canterbury*, greeting. Whereas by our writ we commanded our late sheriff of the city of *Canterbury*, that he should take *J. L.* if he should be found in his bailiwic, and keep him safely, so that he might have his body before our justices at *Westminster*, from the day of St. *Michael* in three weeks in the first year of our reign, to answer *J. A.* in plea of trespass, and also for 16*l.* of debt upon demand; and the said *J. L.* by virtue of our said writ was taken, and is now detained in our prison under your custody; *Yet* because the said *J. A.* hath in no manner hitherto proceeded in the sai i pleas against the said *J. L.* and the said *J. L.* hath by *L. R.* his attorney appeared in our

court before our justices at *Westminster*, and is ready to answer the said *J. A.* in the pleas aforesaid, we therefore command you, that if the said *J. L.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J. L.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

Supersedeas for want of declaring in two causes.

GEORGE the third, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 50 *l.* whereupon bail for 20 *l.* was directed to be taken: And whereas the said *A.* is also detained in our said prison under your custody by virtue of another writ of *Capias*, returnable before our said justices at *Westminster*, on, &c. [*the return*] to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *E.* of 50 *l.* whereupon bail for 40 *l.* was directed to be taken: But because it sufficiently appeareth to our said justices at *Westminster*, that the said *A.* hath appeared in our court before our said justices by *W. R.* his attorney, to answer as well the said *C.* as the said *E.* in the several pleas aforesaid; and that the said *C.* and *E.* have not, and neither of them hath, proceeded

ceeded to declare against the said *A.* in due time after his commitment, pursuant to the rules of our court of *Common Pleas* at *Westminster*; we therefore command you, that if the said *A.* be detained in our prison under your custody for the causes aforesaid, and no other, that then you immediately discharge him from your said custody, and suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

Supersedeas for want of an affidavit of the debt and indorsement on the back of the declaration wherewith defendant was charged in the Fleet.

GEORGE the third, &c. To the warden of our prison of the *Fleet*, greeting. Whereas *J. G.* in the term of the Holy *Trinity* last past [*if delivered in the vacation, insert the day*] was charged in our said prison under your custody with a copy of a declaration, at the suit of *T. B.* in an action of debt upon bond for the sum of But because it sufficiently appears to our justices at *Westminster*, that no affidavit that the said plaintiff's cause of action amounted to 10 *l.* or upwards, was first made and filed in the proper prothonotary's office, nor an indorsement made by the said prothonotary or his deputy upon such copy of the declaration, signifying the sum of money which should have been specified in such affidavit, according to the late rule made for that purpose; and because the said *J.* hath appeared by his lawful attorney to answer the said *T.* in the plea aforesaid, we command you, that if the said *J.* be detained in our said prison under your custody, by virtue of the said declaration, and for no other cause, that then you

suffer

suffer him to go at large, as you will answer the contrary at your peril. Witness Sir *William De Grey*, knight, at *Westminster*, the sixth day of *November* in the seventh year of our reign.

Superfedeas *for want of plaintiff's proceeding to judgment within three terms after declaration delivered.*

GEORGE the third, &c. To the sheriff of *S.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] last past, to answer *C. D.* in a plea of trespass; and also in a certain plea of debt upon demand for 40 *l.* And whereas the said *A.* afterwards, that is to say, on the 17th day of *May* last past, was charged with a declaration at the suit of the said *C.* in the plea aforesaid; but because it appeareth to our justices at *Westminster*, that the said *A.* hath appeared in our court of *Common Pleas*, to answer the said *C.* in the plea of debt aforesaid, and that the said *C.* hath not proceeded to judgment against the said *A.* within three terms after the delivery of the said declaration, as required by the rules of our said court, we command you, that if the said *A.* be detained in our prison under your custody, for the cause aforesaid, and no other, you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

Superfedeas *for not charging defendant in execution*

GEORGE the third, &c. To the warden of our prison of the *Fleet*, greeting. Whereas *M. D.* on the 21st day of *June* 1766,

1766, rendered herself to our said prison of the *Fleet* before esq; one of our justices of our court of the bench in discharge of her bail, at the suit of *U. R.* and *H. C.* for 40 *l.* And because the said *U.* and *H.* have not proceeded to charge the said *M.* in execution within two terms next after judgment obtained, according to the rules of our said court of the bench, we therefore command you, that if the said *M.* be detained in your custody for that, and no other cause, that then you suffer her to go at large, as you will answer the contrary at your peril. Witness, *&c.*

within two terms after judgment.

GEORGE the third, *&c.* To the warden of our prison of the *Fleet*, greeting. Whereas it hath been certified to our justices of our court of the bench at *Westminster*, that *A. B.* was committed to our said prison of the *Fleet* for want of bail, upon our writ of *Habeas corpus*, at the suit of *C. D.* in a plea of trespass, and also in a certain plea of debt upon demand for 45 *l.* And on the 27th of *May* 1765, was charged with a declaration at the suit of *E. F.* in a plea of trespass on the case for 50 *l.* And on the 30th day of the same month, was charged with a declaration at the suit of the said *C.* in a plea of debt for 40 *l.* And also on the 13th day of *June* then next following was charged with another declaration at the suit of *G. H.* in a plea of trespass on the case for 20 *l.* And for that it appeareth to our said justices, that the said *C.* and *E.* or either of them, have not proceeded to charge the said

Supersedeas *for want of proceeding to judgment and execution at the suit of several plaintiffs.*

ſaid *A.* in execution in due time in the ſaid cauſes or either of them, according to the rules and orders of our ſaid court; and alſo, for that it appeareth to our ſaid juſtices that the ſaid *G.* hath not in due time proceeded to judgment againſt the ſaid *A.* in the ſaid cauſe, according to the rules and orders of our ſaid court; and becauſe the ſaid *A.* hath appeared in our ſaid court by his lawful attorney in the ſeveral actions aforeſaid; therefore, *&c.*

Bill

Bill of COSTS on Proceedings against PRISONERS.

Michaelmas Vacation, 1777.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Retainer, attending and taking instructions.	0	0	0	0	2	2	0	4	4
Affidavit of debt.	0	2	7	0	4	1	0	5	7
Capias	0	4	10	0	7	11	0	11	0
Warrant thereon, and messenger	0	0	4	0	0	10	0	1	4
Paid officer for arrest	0	10	6	0	10	6	0	10	6

Easter Term, 1778.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching at *Fleet* prison for *Hab. Corp.* whereby prisoner was removed, and inspecting the return	0	0	0	0	1	8	0	3	4
Drawing declaration and copy fol. 11	0	0	0	0	5	6	0	11	0
Entring on roll and paid prothonotary	0	6	0	0	8	6	0	11	0
Copy on stamp to deliver to defendant in custody, and duty	0	0	3	0	2	1	0	11	11
Another copy to annex to affidavit	0	0	3	0	2	1	0	3	11
Delivering declaration at *Fleet* prison		0	0	0	1	8	0	3	4

Paid

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid turnkey	0	1	0	0	1	0	0	1	0
Affidavit of delivering declaration, duty and oath in vacation	0	3	7	0	5	1	0	6	7
Filing declaration, and affidavit with fecondary	0	0	0	0	1	8	0	3	4
Term fee	0	0	0	0	2	6	0	5	0
Porters letters and meffengers	0	0	0	0	1	0	0	2	0

Trinity Term following,

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Rule to plead	0	2	2	0	2	6	0	2	10
Searching for plea	0	0	0	0	1	8	0	3	4
Drawing interlocutory judgment with award of inquiry, fo. 3	0	0	0	0	1	6	0	3	0
Ingroffing, proceedings on paper and duty, fo. 14	0	0	3	0	2	7	0	4	11
Entering fame on roll	0	0	0	0	2	4	0	8	4

N. B. The reft of the fees will be the fame as on other inquiries in this court, varying according to the length of the proceedings. See bill of cofts on proceedings againft a member of parliament. *Poftea fol.*

Costs

Costs of SUPERSEDEAS to discharge Prisoner out of Custody.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid for clerk of papers his certificate	0	3	6	0	3	6	0	3	6
Prothonotary's ditto	0	5	0	0	5	0	0	5	0
Three ſummonces to ſhew cauſe why defendant ſhould not be diſcharged	0	6	0	0	6	0	0	6	0
Copies and ſervice	0	0	0	0	3	0	0	6	0
Attendances	0	0	0	0	5	0	0	10	0
Affidavit of ſervice	0	2	7	0	4	1	0	5	7
Judge's *Fiat* and order	0	6	0	0	7	0	0	8	0
Superſedeas	0	5	2	0	8	6	0	11	10
Appearance for defendant	0	2	6	0	4	2	0	5	10

Proceedings in (a) *ejectment.*

An action of trespass and ejectment, what it is.

AN action of trespass and ejectment is given to a tenant for term of years, who is ousted of his term, and he may thereby recover the remainder of his term and damages. It is now used as the most common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The person who claims the messuages or lands in dispute, and who is called the lessor of the (*b*) plaintiff, is supposed to have made a lease of the premisses to the plaintiff for term of years yet in being; the plaintiff is supposed to have entered by virtue of that lease, and the defendant, who is termed the casual (*c*) ejector (being only a nominal person) is supposed to have

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(*a*) Ejectment is a fiction, and in the breast of the court. *Barnes* 180.

(*b*) Name of *nominal* plaintiff happening to be a real person's name, no cause for censuring the attorney; this proceeding being considered as purely fictitious, for he cannot release the action, and that a person in human nature, of the same name of the nominal plaintiff, is not to be taken to be the real plaintiff. *Barnes* 189.

(*c*) Casual ejecter cannot bring a writ of error *Barnes* 189. Attorney ordered to *non pros* such a writ at his own expence, and pay costs. *Barnes* 181.

entered upon the plaintiff and turned him out of possession.

Of commencing this action.

The common method of commencing this action is by delivering a copy of the declation to the tenant in possession of the premisses, with a notice thereunder written to appear and defend his title, or else that the defendant, the casual ejector, will suffer judgment to go by default, and thereby the tenant be put out of possession.

The tenant in possession may be admitted to defend his title, on entering into the common rule.

The tenant in possession may be admitted to defend his title on entering into the common rule, *viz.* to become defendant in the room of the defendant the casual ejector, receive a declaration, plead the general issue, and at the trial to confess the lease, entry and actual ejectment of the plaintiff.

In the Common Pleas.

Trinity *(d) term in the seventeenth year of king* George *the third.*

Declaration in ejectment of five messuages.

(*e*) Middlesex, *to wit.* JOHN Doe, late of the parish of St. *George the Martyr*, in the county of *Middlesex*, yeoman, was attached to answer *Richard Roe* of a plea, wherefore with force and arms he entered

(*d*) Judgment refused upon declaration intituled *Trinity* Term, 17 *Geo.* II. instead of 16 and 17 *Geo.* II. In country causes, where declarations are of *Trinity*, notice may be good to appear in next *Hilary*, (passing over *Michaelmas*) though not the usual practice. *Barnes* 186.

(*e*) Rules for judgment for lands in *Denbighshire*, *Wales*. *Barnes* 181.

into five (*f*) messuages with the appurtenances in the (*g*) parish of *Stebon-Heath*, otherwise *Stepney*, in the county of *Middlesex*, which *Thomas Bland* and *Conrade de Golls* demised (*h*) to the said *Richard* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *Richard*, and against the peace of our sovereign lord the king; and whereupon the said *Richard* by *Joseph Dobyns* his attorney complaineth, that whereas the said *Thomas* and *Conrade* on the 25th day of *April* in the 6th year of the reign of his said majesty, at the said parish of *Stebon-Heath*, otherwise *Stepney*, in the county aforesaid, had demised to the said *Richard* the said tenements with the appurtenances; to have and to hold the said renements with the appurtenances to the said *Richard* and his assigns, from the 24th day of *April* aforesaid in the year aforesaid, unto the full end and

(*f*) *One messuage or tenement* are too uncertain words in the declaration; and judgment arrested for that cause. *Barnes* 173.

(*g*) Court held the description of one messuage with the appurtenances, in the parish of St. *John* the *Baptist*, and St. *Michael*, in the city of *Coventry*, and county of the same city, *or one of them*, to be totally *uncertain*, and that one of the parishes could not be rejected as surplusage, that defendant could not know what to defend for, nor sheriff of what to give possession; and for this cause arrested judgment, after verdict for plaintiff. *Barnes* 184.

(*h*) Demise is never amended, in point of time, without consent. *Barnes* 17, 186.

term

term of five years thence next ensuing and fully to be complete and ended; by virtue of which demise the said *Richard* entered into the said tenements with the appurtenances, and was possessed thereof; and the said *Richard* being so possessed thereof, the said *John* afterwards, *to wit*, on the said 25th day of *April* in the said 6th year, with force and arms, *&c.* entered into the said tenements with the appurtenances which the said *Thomas* and *Conrade* had demised to the said *Richard* in form aforesaid, for the term aforesaid which is not yet expired, and ejected the said *Richard* from his said farm, and other wrongs, *&c.* to the great damage, *&c.* and against the peace, *&c.* whereupon the said *Richard* saith, that he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth suit, *&c.*

The notice.

Mr. *John Wilkinson*, I am informed that you are in possession of, or claim title to, the premisses in this declaration mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the said premisses, do advise you to appear on the first (*i*) day of the next *Michaelmas* term in his majesty's court

(*i*) Where the notice to appear, on a vacant possession in *London*, was not on the first day, but in the beginning of *Mich.* term; rule was made for judgment, unless some person claiming title appeared within four days. *Barnes* 175.

of *Common Pleas* at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. I am

Your humble Servant,
John (*k*) *Doe.*

Declaration in ejectment is the first process. *Barnes* 173, 186.

In the Common Pleas.

Easter *term in the seventeenth year of king* George *the third.*

Declaration in ejectment of manors, messuages, barns, stables, &c.

Suffolk, *to wit.* T. *C.* late of *London*, gentleman, was attached to answer *L. S.* in a plea, wherefore with force and arms he entered into the manors of *K.* otherwise *K. H. C. H B.* and *G. W.* and 50 messuages, 50 barns, 50 stables, 50 gardens, 20 cottages, one water corn-mill, one wind-mill, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, 500 acres of wood, and 500 acres of furze and heath, with the appurtenances, in the parishes of *G. W. L.*

(*k*) The *English* notice at the foot of the declaration was subscribed by the nominal plaintiff, instead of the casual ejector, which court held bad, and discharged the rule for judgment. *Barnes* 172.

W. B.

W. B. and *K.* in the said county of *Suffolk*, which the honourable *M. G.* spinster, demised to the said *E.* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *E.* and against the peace of our sovereign lord the king; and whereupon the said *E.* by *J. W.* his attorney complaineth, that whereas the said *M.* on the first day of *January* in the 7th year of the reign of his said majesty, at *Ipswich* in the county aforesaid, had demised to the said *E.* the said manors and tenements, with the appurtenances, to have and to hold the said manors and tenements, with the appurtenances, to the said *E.* and his assigns, from the 29th day of *September* then last past, to the full end and term of seven years then next following, and fully to be complete and ended: By virtue of which said demise the said *E.* entered into the said manors and tenements with the appurtenances, and was possessed thereof; and the said *E.* being so possessed thereof, the said *T.* afterwards (that is to say) on the first day of *January* in the said 7th year, with force and arms, that is to say, with swords, staves, and knives, entered into the said manors and tenements with the appurtenances, which the said *M.* demised to the said *E.* in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said *E.* out of his said farm, and other wrongs, *&c.* to the great damage, *&c.* and against the peace, *&c.* Whereupon the said *E.* saith he is injured, and

and hath damage to the value of 20 *l.* And thereof he bringeth this suit, *&c.*

T. H.

The notice. I am informed that you are in possession, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim nor title to the same, do advise you to appear on the first day of next *Trinity* term in his majesty's court of Common Bench at *Westminster*, by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,

20 *May* 1778. *T. C.*

Declaration was delivered to tenant in possession, in *Trinity* vacation, with (*l*) notice to appear in *Hilary* term then next; tenant in *Michaelmas between*, entered an appearance, but proceeded no further; and four days after *Hilary* term, plaintiff finding no appearance, no common rule entered into, or plea given, left, or filed, signed judgment against casual ejector; tenant moved to set aside judgment, and on hearing council on

(*l*) Appearance should have been entered of the term mentioned in the notice. *Barnes* 250.

both

both ſides, court was of opinion, that judgment was (*m*) regular. *Barnes* 250.

Declaration in ejectment on a double demiſe.

Lincoln, *to wit.* *A. B.* late of, *&c.* was attached to anſwer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, *&c.* in the pariſh of *S.* in the county aforeſaid, which *E. F.* demiſed to the ſaid *C.* for a term which is not yet expired; and into 500 other acres, *&c.* in the pariſh of *S.* aforeſaid in the county aforeſaid, which *G. H.* demiſed to the ſaid *C.* for a term which is not yet expired, and ejected him from his ſaid ſeveral farms, and other wrongs to him did, to the great damage of the ſaid *C.* and againſt the peace of our lord the now king, *&c.* And whereupon the ſaid *C.* by *W. R.* his attorney complaineth, that whereas the ſaid *E.* on the day of in the year of the reign of the ſaid lord the king, at in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid firſt above mentioned, with the appurtenances; to have and to hold the ſame tenements firſt above mentioned with the appurtenances, to the ſaid *C.* and his aſſigns, from the feaſt of then laſt paſt, to the full end and term of

1. Demiſe.

(*m*) But as the title had not been tried, the judgment was ſet aſide on payment of coſts, entring appearance of proper term, and into common rule by conſent. *Barnes* 250.

years,

years, from thence following, and fully to be complete and ended. *And whereas also* the ſaid *G.* on the ſame day of in the ſaid year of the reign of our ſaid lord the king, at aforeſaid in the county aforeſaid, had demiſed to the ſaid *C.* the tenements aforeſaid laſt above mentioned with the appurtenances; to have and to hold the ſame tenements laſt above mentioned with the appurtenances to the ſaid *C.* and his aſſigns, from the ſaid day of then laſt paſt, to the full end and term of years from thence next following, and fully to be complete and ended: By virtue of which ſaid ſeveral demiſes the ſaid *C.* entered into the ſeveral tenements aforeſaid, with the appurtenances, and was poſſeſſed thereof; and the ſaid *C.* being ſo poſſeſſed thereof, the ſaid *A.* afterwards, that is to ſay, on the day of in the ſaid year of the reign of our ſaid lord the king, with force and arms, that is to ſay, with ſwords, ſtaves and knives, entered into the ſaid ſeveral tenements above ſpecified, with the appurtenances, reſpectively demiſed to the ſaid *C.* in manner aforeſaid, and upon the poſſeſſion of the ſaid *C.* thereof, and ejected the ſaid *C.* out of his ſaid ſeveral farms (his ſaid ſeveral terms therein not being ended) and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *C.* ſaith, that he is injured and damaged to the value of 10*l.* And thereof he bringeth ſuit, *&c.*

2. *Demiſe.*

Sixteen

Sixteen (*n*) declarations in ejectment, ordered to be consolidated into one, after the issues joined. *Barnes* 176.

Demise may be laid on a day after the term the declaration is of.

Pract. Reg. C. P. 164.

In many cases the demise may be laid on a day after that term of which the declaration is; as where a title accrued at *Christmas*, a declaration of *Michaelmas* term is delivered before the essoin-day of *Hilary* term, and the demise is laid to be on the first day of *January*, if the tenant does not appear and defend, the court will give judgment against the casual ejector, and the tenant cannot move in arrest of judgment, as being no party to the suit; neither can a writ of error be brought in the casual ejector's name. If the tenant does appear, all will be right, for a declaration and issue will be made up of *Hilary* term, which will be after the demise.

No judgment against casual ejector without

No (*o*) judgment shall be entered against the casual ejector without motion first made by a serjeant in court, and oath in writing of

(*n*) Each declaration contained a large number of messuages, and word for word the same. *N. B.* had each declaration been for one messuage only, plaintiff might have tried them separately. *Barnes* 176.

(*o*) Court declared that the intent of signing judgment against the casual ejector, was only that the plaintiff, after having tried his cause against the landlord (tenant not being party) might have the benefit of his verdict, and take possession under the judgment, which under verdict he could not; and that it was reasonable (upon a proper affidavit) to grant a rule to shew cause, before judgment against the casual ejector could be signed, to prevent the ill consequence of taking possession immediately after. *Barnes* 179.

notice

out motion, and notice to tenant in possession.

notice to the owner or tenant in possession of the lands in question, notwithstanding any former rule. *Pasc.* 12 *Car.* 2.

To whom declaration in ejectment may be delivered.

Delivery of declaration in ejectment must be to the tenant himself or his (*p*) wife, otherwise not good, though it be to the tenant's (*q*) father, (*r*) son, (*s*) daughter, (*t*) sister, (*u*) servant, unless the tenant afterwards acknowledges the receipt thereof, which (*x*) acknowledgment must be proved to the court by affidavit.

The contents of the declaration, as well as those of the notice or subscription (*y*) thereto of the casual ejector, to the tenant in possession, must be so signified and explained by the party serving to the party served, at the time of the service, as be fully understood by the latter, be the service on the tenant in possession, or upon any other person; which must always be on the premisses in question; except only when the tenant is served personally, for then it need not.

(*p*) *Bul. Ni. Pri.* 95. *Barnes* 178, 180, 181, 194. See *Wilf. Rep. C. B.* 263.

(*q*) *Barnes,* 176.

(*r*) *Barnes* 190.

(*s*) *Barnes* 175, 183, *Co. Caf.* 115.

(*t*) *Rich. Reg.* 167.

(*u*) *Barnes* 188.

(*x*) *Bul. Ni. Pri.* 95. *Co. Caf.* 115. *Barnes* 175, 176, 185. *Rich. Reg.* 167.

(*y*) *Barnes* 167, 168, 169, 185.

In

In every case of service of the declaration, in the absence of the tenant, (the cases of serving tenant's father, daughter, sister, servant, with those of deserted possessions, and those especially provided for by *stat.* 4 *Geo.* 2. chap. 28. *sect.* 2. always and only excepted), there must be a tender of the copy to and refusal thereof by tenant, at time of attempting to serve it, either proved or confessed; and that above acknowledgement by tenant, of receipt of copy, will not be deemed sufficient (except as before excepted) in this court. See *Barnes* 171.

Service of the declaration in ejectment on the servant of the tenant in possession, fixing at the same time copy of declaration, on street door, deemed sufficient in this court; as well, when tenant does not abscond, as when he does. See *Barnes* 188, 190, 192.

The declaration was tendered to the tenant in possession, whereupon it was left upon the floor in his presence; and he retiring into a parlour, and shutting the door, the person who so tendered and left the declaration, read the subscription aloud, so that the tenant might hear it; this was held good service. *Barnes* 185.

The tenant in possession secreting himself in the house, so that he could not be personally served with a declaration in ejectment; a rule was made to shew cause, why service of it on the servant at the house, should not be good; the rule to be served on the same manner. *Barnes* 188.

On

On affidavit, that the tenant absconded to avoid being ſerved; that ſhe came into the poſſeſſion ſurreptitiouſly, and of ſervice of declaration in ejectment on her ſon, who is her ſervant, manages her affairs, and lives in her family; rule to ſhew cauſe, why ſuch ſervice on her ſon and ſervant, ſhould not be deemed good ſervice, and leaving a copy of this rule at her houſe good ſervice, made abſolute. *Barnes* 190.

On affidavit, that one of the tenants is a lunatick; that one *C.* lives with, tranſacts her buſineſs, and has the ſole conduct thereof, and of her perſon; but would not permit the deponent to have acceſs to her with the declaration in ejectment; whereupon it was delivered to *C.* Rule that ſhe and *C.* both ſhew cauſe, why this ſervice ſhould not be good; and ſervice of this rule on him be good ſervice thereof. *Barnes* 190, 191.

On affidavit, that the tenant in poſſeſſion ſecreted himſelf to prevent his being ſerved with a declaration in ejectment, and could not be ſerved, though frequent endeavours had been uſed; and that the declaration had been delivered to his daughter, who kept his houſe (being a public houſe); and that ſhe was acquainted with the contents of the ſubſcription. A rule was made for the tenant to ſhew cauſe, why ſuch former ſervice ſhould not be deemed good ſervice; the rule to be ſerved on the daughter at the houſe. *Barnes* 192.

Service of declaration on church-wardens and overſeers of pariſh, who rented an houſe

for

for harbouring ſome of the pariſh poor; and did not otherwiſe occupy the houſe than by placing the poor in it, deemed ſufficient. *Barnes* 181.

Tenant in poſſeſſion to have notice to appear the beginning of the enſuing term.

Upon the delivery of a declaration in ejectment in *London* or *Middleſex*, the tenant in poſſeſſion is to be acquainted, that he is to appear by his attorney here in court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff ſhall take nothing by his motion for judgment againſt the caſual ejector for default of appearance, unleſs the motion be made within one week next after the firſt day of every *Michaelmas* term, and every *Eaſter* term, and within four days after the firſt day of every *Hilary* and *Trinity* term. *Trin.* 32 *Car.* 2.

Within what time motion for judgment muſt be made.

This rule relates only to declarations in ejectment ſerved upon tenants in poſſeſſion; and an ejectment on a vacant poſſeſſion in *London* or *Middleſex*, on *ſtat.* 4 *Geo.* II. *chap.* 28. may be moved at any time in term. *Barnes* 172.

No inſtance in caſe of vacant poſſeſſion, (except ſuch as are within *ſtat.* 4 *Geo.* II. *chap.* 28. concerning landlords and tenant by leaſe, with a clauſe of re-entry) can be adduced, in which any perſon claiming title, hath been let in to defend; for he who can firſt ſeal a leaſe on the premiſſes, may obtain poſſeſſion, and any other perſon claiming title, may eject him if he can; and by the conſtant practice of this court, no defence can be made in this caſe, but by the defen-

dant in the ejectment, who is a real ejector. *Barnes* 177.

Declaration must be delivered before Essoin day of term

A true and examined copy of the declaration on a treble penny stampt sheet of paper, must be delivered to the tenant on or before the Essoin day of the then next term. 5 *Com. Dig.* 249. *Barnes* 172, 173. otherwise plaintiff cannot have judgment till the subsequent term; and the reason is, because the declaration is the first process *Barnes* 173.

Notice in country ejectments.

In a country ejectment the tenant is to appear and plead within four days exclusive after the next issuable term; but if the lands lie in a county where the assizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding such assizes.

In Lond. *and* Middlesex.

If the lands lie in *London* or *Middlesex*, the notice to appear should be for the first day of the next term; if in any other county, the notice may be for the beginning of the next term, or for the next term generally.

Leave to plead *ancient* (z) *demesne*, upon (*a*) affidavit, that premisses in question were reputed to be lands in *ancient demesne*. *Barnes* 185.

(z) *Barnes* 194, if he applies within the first four days of the term, for if this plea be not confined to a time certain, great delay of justice must follow; if plaintiff prevails on this plea to jurisdiction of court, judgment must be that defendant answer over. *Barnes* 187.

(*a*) Affidavit sufficient to shew probable cause for pleading this plea. *Barnes* 185.

To

To move for judgment, you make an affidavit of the service of the declaration in this form:

In the *Common Pleas.*

Richard Roe against *John Doe*,	In ejectment on the demise of *Thomas Bland* and *Conrade de Golls.*

L. R. of, *&c.* makes oath, that he this deponent did, on the day of last past, deliver to Mr. *John Wilkinson*, the tenant in possession of the premisses mentioned in the declaration hereunto annexed, or of some part thereof, a true copy of the said declaration, and of the notice there under written, and did at the same time inform the said *John Wilkinson*, that unless he would appear in this court by some attorney thereof on the first day of this present *Michaelmas* term, and cause himself by rule of the said court to be made defendant in the room of the casual ejector *John Doe*, judgment would be entered against the said casual ejector by default, and that he the said *John Wilkinson* would be turned out of possession; or words to that or the like effect.

Affidavit of service of a declaration in ejectment.

Affidavit of service "on *A. B.* tenant, *or C.* his wife," not sufficient, *Barnes* 173, nor "on the wives of *A. B.* who, *or* one of them, are tenants." *Id.* 174, 175, but "on the wife of tenant in possession, as she informed deponent, and as he verily believes," held sufficient. *Id.* 194. Rule to make

ſervice good, ſet aſide, becauſe the affidavit on which it was grounded, was ſworn before plaintiff's attorney, as a commiſſioner. [illegible] 92.

On this affidavit you get a ſerjeant to move for judgment againſt the caſual ejector.

You pay,

	l.	s.	d.
For the duty and oath of the affidavit ——	o	2	6
To the ſerjeant to move ——	o	10	6
Rule duty, and filing the affidavit	o	6	[illegible]

In the Common Pleas.

Hilary *the ſeventeenth of king* George *the third.*

Rule for judgment againſt the caſual ejector.

Hunt againſt *Jones*, The caſual ejector. } TWelfth day of *February*, upon the affidavit of *Thomas Shewell*, gent. It is ordered, that unleſs *William Collins*, tenant in poſſeſſion of the tenements in queſtion, or any other perſon concerned in the title thereof on *Saturday* next ſhall appear by an attorney of this court, who ſhall then forthwith receive a declaration, and plead thereto the general iſſue, and conſent to the common rule for confeſſing leaſe, entry and ouſter, upon the trial to be had, let judgment againſt the caſual ejector be entered; and in the

the mean time proceedings are to ſtay, upon the motion of maſter ſerjeant *Baynes.*

By the court.

Entered *Fothergill.*

No declaration in ejectment ſhall be taken or received by the ſecondary, unleſs ſigned by ſome ſerjeant at law, and delivered by himſelf to the ſecondary in open court. *Hil.* 7 *Geo.* 2.

Secondary not to receive decl. in ejectment unleſs ſigned by a ſerjeant.

The ſecondary ſhall the morning next after the end of every term, and at all other times when required, ſhew to any perſon, who ſhall demand the ſame, his alphabetical paper of ejectments, moved or delivered into court in each term. *Same rule.*

Secondary, on requeſt, to ſhew his alphabetical paper of ejectments.

When the rule is out, you ſearch the prothonotary's plea-book, and if no plea is left, you ingroſs the declaration on a double half-crown ſtamped ſheet of paper, to which you affix the rule againſt the caſual ejector, and the prothonotary will ſign judgment; then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias poſſeſſionem,* for which you pay duty 1 *s.* 6 *d.* Signing 1 *s.* 4 *d.* Sealing 7 *d.*

Of ſigning judgment againſt the caſual ejector.

If the tenant (*b*) appears, his attorney gets a blank rule from the ſecondary, for which he pays 6 *d.* then fills it up according to the enſuing form, and ſigns his name at the bot-

Of the tenant's appearing.

(*b*) Though appearance is generally entered after firſt four days of term, yet it is always conſidered as appearance of firſt day of the term. *Barnes* 188.

tom of it, ingroffes the general iffue, Not guilty (*postea* ,) in a double penny ftamped fheet of paper, and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who thereupon ftamps the rule, and then leaves the plea with rule annexed with the prothonotary.

Appearance for tenant (*c*) in poffeffion, gets be entered with filacer; and the consent rule marked by him, before left in the prothonotary's office. *Barnes* 178.

The expence is as follows:

	l.	s.	d.
Search for motion for judgment againft the cafual ejector	0	0	6
Blank rule —— ——	0	0	6
Entering appearance ——	0	2	0
Entering plea —— ——	0	2	0

In the Common Pleas.

Michaelmas *term feventeenth year of* George *the third.*

The general rule.

Middlefex, *to wit.* IT is ordered by confent of *J. D.* attorney for the plaintiff, and *L. R.* attorney for *J. W.* who claims title to the tenements in queftion, that the faid

(*c*) The common rule by confent, having been entered for tenant, without confent, rule to fhew caufe, why the judgment figned againft the cafual ejector, fhould not be fet afide, was difcharged with cofts *Barnes* 175.

J. W.

J. W. shall be admitted defendant; and that the said J. W. shall immediately appear by his [illegible] attorney, who shall receive a de[claratio]n, and plead thereto the general [issue th]is term; and at the trial to be had [the defend]ant shall appear in his proper person, or [by c]ounsel or attorney, and confess the [le]ntry and ouster of so much of the te[nements] specified in the plaintiff's declara[tion a]s are in the possession of the said de[fend]ant or his tenants, or any persons claim[ing b]y or under his title; or that in default [o]f judgment shall be thereupon entered against the defendant John Doe the casual ejector; but proceedings shall be stayed against him until default shall be made in any of the premisses; and by the like consent it is further ordered, that if by reason of any such default the plaintiff shall happen to be nonsuited upon the trial, the said J. W. shall take no advantage thereof, but shall thereupon pay to the plaintiff costs to be taxed by the prothonotary. And it is further ordered, that the lessor of the plaintiff shall be liable to the payment of costs to the said J. W. by the court here to be in any manner allowed or adjudged.

By the court.

J. D. for the plt.
L. R. for the deft.

Roe *against* Doe *for five messuages with the appurtenances, in the parish of* Stepney *in the county of* Mid. *on the demise of* T. Bland *and* Con. de Golls.

Tenants in possession appeared with filacer, and entered into common rule, which was left in prothonotary's office, intituled with true name of cause, but by mistake in body

of plea, name of plaintiff's lessor was inserted (as person complaining) instead of nominal plaintiff's: attorney looking upon plea as null, signed judgment against ejector, which judgment was set aside with costs as irregular, plea being properly intituled and no nullity. *Barnes* 191.

From this rule the plaintiff's attorney gets two rules drawn up by the secondary in the same manner on stamp paper, one for each party; this costs 7*s.* and then the plaintiff's attorney will make up the issue, and deliver a copy of it, and notice of trial to the defendant's attorney; and thereupon proceed to trial as in other cases.

Where several defts. and some refuse to confess lease, entry, &c.

If there be several defendants, and at the trial the plaintiff obtains a verdict against some of the defendants, and the other defendants refuse to confess lease, entry and ouster, the plaintiff may sign judgment against the casual ejector as to them. *Barnes* 121, 174.

If Issue not paid for, judgment against deft. who appeared.

If the defendant's attorney does (*d*) not pay for the issue, the plaintiff's attorney may sign judgment against the defendant, but not against the casual ejector, *ut* (*e*) *dicitur*; but see the words of the rule by consent.

(*d*) *Barnes* 176. (*e*) *Barnes* 253, *in Calcem.*

A Nisi

A Nisi prius *record in ejectment, with the* postea.

Pleas at Westminster *before Sir* William De Grey, *knight, and his companions, the lord our king's justices of the bench, of the term of* Easter *in the seventeenth year of the reign of our sovereign lord* George *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

ter time

Ro. 579.

Declaration

Middlesex, *to wit,* C. *L.* late of the parish of St. *John the Baptist* in the precinct of the *Savoy* in the *Strand* in the county aforesaid, gent. was attached to answer *R. R.* of a plea, wherefore with force and arms, five chambers and one kitchen with the appurtenances, in the precinct of the *Savoy* aforesaid in the *Strand* in the county aforesaid, which Sir *P. B.* bart. and *T. B.* esq; to the aforesaid *R.* did demise for a term which is not yet past, he the said *C.* entered, and the said *R.* from his farm aforesaid ejected, and other enormities to him did, to the great damage of him the said *R.* and against his present majesty's peace. And whereupon the said *R.* by *J. S.* his attorney complaineth, that whereas the aforesaid Sir *P. B.* and *T. B.* the fifth day of *January* in the sixth year

year of his present majesty's reign, at the parish of St. *Clement Danes* in the county aforesaid, did demise unto him the said the tenements aforesaid, with the appurtenances; to have and to hold the tenements aforesaid, with the appurtenances, to the said *R* and his assigns, from the 11th day of *December* then last past, unto the full end and term of five years from thence next following and fully to be complete and ended. By virtue of which demise the said *R.* into the tenements aforesaid, with the appurtenances, did enter, and was thereof possessed; and he the said *R.* so being thereof possessed, the aforesaid *C.* afterwards, *to wit*, the same 5th day of *January* in the 6th year aforesaid, with force and arms, *&c.* into the tenements aforesaid, with the appurtenances, which the aforesaid Sir *P. B.* and *T. B.* to him the said *R.* in form aforesaid had demised for the term aforesaid, which is not yet past, did enter, and him the said *R.* from his farm aforesaid did eject, and other enormities did to the said *R.* to the great damage of the said *R.* and against the peace of his present majesty; whereupon he saith, that he is dammified, and hath damage to the value of 20*l.* And thereof he bringeth suit, *&c.*

Plea. And the said *C. L.* by *G. H.* his attorney cometh and defendeth the force and injury by the aforesaid *R.* against him charged, when and where, and in such manner, as this court shall award, and saith, that he is not guilty of the trespass and ejectment aforesaid

said, in such manner and form as the said *R. R.* hath against him above complained: and this he putteth himself upon his country: And the aforesaid *R.* doth so likewise, &c. Therefore the sheriff is commanded to cause to come here in five weeks from the feast-day of *Easter* twelve good and lawful men of the body of his county, every one of whom to have 10*l* at least by the year in lands, tenements or rents, by whom the truth of the matter may be better known, and who neither are any ways related to the said *R. R.* plaintiff, nor to the said *C. L.* defendant, to recognize whether the said *C. L.* is guilty of the premisses, as the said *R.* above complaineth, because as well the said *R.* as the said *C.* between whom the contention thereupon is, have put themselves upon their country.

Award of the Venire.

Middlesex, *to wit*, The jury between *R. R.* plaintiff, and *C. L.* late of the parish of St. *John Baptist* in the precinct of the *Savoy* in the *Strand* in the county aforesaid, gent. in a plea of trespass and ejectment of the farm, is respited here until on the morrow of the Holy *Trinity*, unless Sir *John Eardley Wilmot*, knt. chief justice of our lord the king of the bench here assigned, by form of the statute in that case made and provided, on *Tuesday* the 8th day of *May* at *Westminster* in the great hall of pleas there, commonly called *Westminster-hall*, in the said county, shall first come for the default of the jury, because none came, therefore let the sheriff have

Jurata.

have the bodies of the ſeveral perſons mentioned in the panel to the writ of *Habeas corpora juratorum* annexed; and be it known

Le ſciendum. that the juſtices thereupon here in [illegible] the ſame term delivered a writ to the deputy of the ſheriff of the county aforeſaid, to be executed according to due form of law, *&c.*

Poſtea. Afterwards the day and place within contained, before Sir *William De Grey*, knt. chief juſtice within written, having [illegible] *Higham*, gent. for his aſſociate, by form of the ſtatute, and ſo forth, cometh the within named *R. R.* by his attorney within contained, and the within written *C. L.* altho' ſolemnly called, cometh not; therefore let the jury, whereof mention is within made, be taken againſt him by default; and the jurors of the ſaid jury being called come, who to ſpeak the truth of the within contained being elected, tried and ſworn, ſay upon their oath, that the ſaid *C.* is guilty of the treſpaſs and ejectment within mentioned, as the ſaid *R. R.* within complaineth againſt him; and they aſſeſs the damages of him the ſaid *R.* on occaſion thereof, over and above the coſts and charges which he has been put to about his ſuit in this behalf, to 1*s.* and for the ſaid coſts and charges to 20*s.* Therefore, *&c.*

	l.	*s.*	*d.*
Damages —— ——	0	1	0
Coſts —— ——	1	0	0
Increaſe —— ——	15	15	8
In all —— ——	16	16	8

Signed 30 *May* 1777.

It

It is not usual to grant new trials in ejectment, where the verdict is for the defendant, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him. But where the verdict is for the plaintiff, it is otherwise, and new trials have been granted; for there the consequence of not granting a new trial is the alteration of the possession of the premisses in question. See *Barnes* 440.

Of new trials in ejectment.

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonsuited upon evidence, a *Ca. sa.* must be made out against the plaintiff, and shewed to his lessor, and the costs must be demanded thereupon of the lessor.. See *Barnes* 182.

Of costs in ejectment.

Where the plaintiff is nonsuited by reason of the defendant's not confessing lease, entry and ouster, the costs are taxed on the rule by consent, and judgment signed against the casual ejector. *Barnes* 182.

Rule to tax plaintiff his costs in ejectment, against one of the defendants, who did not appear on the trial, and confess lease, entry and ouster. *Barnes* 149.

Proceedings stayed, till good plaintiff be named, or security to be approved by prothonotary be given by infant lessor, for securing costs to defendant, in case of a nonsuit or verdict for him. *Barnes* 183. Lord chief justice *Willes* said, he thought the court should extend the rule for making a good plaintiff, or giving security for defendant's

tion is delivered to the tenant in possession. *Barnes* 172.

Tenant secreting declaration in ejectment forfeits three years improved rent.

A tenant, to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack-rent of the premisses so holden in possession of such tenant, to the person of whom he holds. *Stat.* 11 *Geo.* 2. *c.* 19.

Landlord impowered to make himself defendant.

The court where such ejectment shall be brought may suffer the landlord to make himself defendant, by joining with the tenant to whom such declaration shall be delivered, in case he shall appear; but in case such tenant shall refuse to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he had appeared, ought to have done, then the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. *Same statute.* The word *landlord* means not every person claiming (*d*) title, but

(*d*) Court refused to make a person, who claimed title, defendant, instead of the late tenant, who had quitted the possession. *Barnes* 195, *ad eadem.*

a person who is in some degree of possession, as receiving rent, *&c. Barnes* 193, 194.

Motion that landlord might be *made* defendant without tenant in possession, who refused to appear, denied, but common rule granted to *add* landlord to tenant. *Barnes* 172.

Motion that tenant in possession might shew cause why he should not (*e*) appear and defend his title, his landlord having tendered him an indemnity, refused, but enlarged the time for appearance. *Barnes* 173.

In cases where landlord is permitted to defend without tenant, reason of judgment against casual ejector, by *Stat.* 2 *Geo.* 2. chap. 19. is, that under it, after end of suit, plaintiff may obtain (*f*) possession of premisses sued for, which he could not do by virtue of a judgment against a person out of possession. *Barnes* 208.

Landlord by *Stat.* 2 *Geo.* 2. chap. 19. is to enter into common rule by consent, before that statute, he might have been added defendant; he is to be considered in all respects, in same case as tenant in possession. *Barnes* 187.

(*e*) Motion for landlord to defend cannot properly be made till after judgment signed against the casual ejector, and affidavit produced of the tenant's refusal or neglect to appear. *Barnes* 179.

(*f*) But when a writ of *error* is brought, there is not the least reason to give plaintiff leave to take possession, till after determination in error. *Barnes* 208.

Landlord moved to add himſelf to tenants; they not entring appearance, plaintiff ſigned judgment againſt caſual ejector; landlord afterwards, without diſcloſing to court, what had been previouſly done, applied for conditional rule, as matter of courſe, and by virtue thereof appeared alone without tenants; court gave leave to take out execution on the (*g*) judgment. *Barnes* 186, 187.

Rules for leave to take out execution by plaintiff againſt caſual ejector, after verdict againſt landlord made defendant inſtead of tenant in poſſeſſion purſuant to *Stat.* 2 *Geo.* 2. chap. 19. be abſolute in firſt inſtance, and not to ſhew cauſe. *Barnes* 185. *in calcem.*

If the plaintiff is nonſuited by default of the landlord's not appearing to confeſs leaſe, entry, &c. or obtains a verdict, the court, on producing the *poſtea*, will make an abſolute rule to take out execution againſt the caſual ejector, and not a rule to ſhew cauſe. *Barnes* 182, 183.

Rule *niſi* for ſetting aſide *Non pros*, for not confeſſing leaſe, entry and ouſter, ordered by court, on payment of coſts, though regular; defendant did not confeſs leaſe, &c. becauſe of a material variance between the

(*g*) Plaintiff offered to waive his judgment, if landlord, who reſided at *Jamaica*, would give his ſecurity for the coſts, but his council would not conſent. *Barnes* 187.

iuſſe

issue and record; court observed, that confession would not have been a defence, and defendant might afterwards have moved to set aside the verdict for the variance. *Barnes* 175.

Writ of restitution ordered for late tenants in possession; judgment being set aside for irregularity, possession ordered to be restored, and lessor of plaintiff, who held the possession, absconding, rule became ineffectual. *Barnes* 178.

Lessor of plaintiff and his attorney prevailing upon tenant in possession, by undue practices, to deliver possession of the premisses, (which defendant claimed as tenant's landlord) pending the suit, after rule obtained by defendant to be at liberty to defend his title, pursuant to *Stat.* 2 *Geo.* 2. chap. 19. (tenant refusing to appear) and entring into common consent rule, held no contempt of the court, but a fraud, which (*h*) ought to be prevented, and is not remedied by said act. *Barnes* 180.

Hab. (*i*) *corp.* is the proper process to remove a plaintiff from the mayor's court in *London*, and not a *certiorari*. *Barnes* 421.

(*h*) Tenants should be bound not to change the possession. *Barnes* 180.

(*i*) Under which defendant must appear in this court, and enter into the common rule, and plaintiff must declare *de novo*. *Barnes* 421.

Habere facias possessionem.

s. *d.*
Signing 1 4
Seal 0 7
1 11

if on a double or treble demise, you pay 8d. for each demise after the first.

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *J. M.* lately in our court, before our justices at *Westminster*, by the consideration of the said court, recovered his term yet to come of and in the manor of *S.* with the appurtenances, and 10 messuages, 500 acres of land, 100 acres of meadow, 300 acres of pasture, with the appurtenances in *S.* in your county, against *L. C.* late of, *&c.* which *J. C.* gentleman, on the 1st day of *October* in the ——— year of our reign, demised to the said *J. M.* to hold and enjoy to the said *J. M.* and his assigns, from the feast of Saint *Michael* the archangel then last past, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said *L.* put out and amoved the said *J. M.* from his possession, and ejected him from his said farm: Therefore we command you, that you cause the said *J. M.* to have his possession of his said term yet to come of and in the said manor and tenements aforesaid, with the appurtenances; and how you shall execute this our precept make appear to our justices at *Westminster* in eight days of the Purification of the blessed *Mary*; and have there this writ. Witness, *&c.*

Habere facias possessionem, *and a* Fi. fa.

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *W. D.* gentleman, lately in our court before our justices at *Westminster*, by the consideration of the said court recovered against *S. F.* late of, *&c.* his term yet to

to come of and in one meſſuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S. J.* and *E. J.* on the firſt day of *October* in the year of our Lord ——, at *L.* aforeſaid, demiſed to the ſaid *W.* to hold and enjoy the ſaid tenements with the appurtenances, to him and his aſſigns, from the ——— day of —— then laſt paſt, unto the end and term of three years thence next enſuing, and fully to be complete and ended, which is not yet paſt; and whereupon the ſaid *S.* put out and amoved the ſaid *W.* from his poſſeſſion, and ejected him from his ſaid farm, therefore we command you, that without delay you cauſe the ſaid *W.* to have his poſſeſſion of his term aforeſaid of and in the ſaid meſſuage and tenements, with the appurtenances; and how you ſhall execute this our precept make appear to our juſtices at *Weſtminſter* in eight days of the Purification of the bleſſed *Mary.* We alſo command you, that of the goods and chattels of the ſaid *S.* in your bailiwic, you cauſe to be made eleven pounds, which were adjudged to the ſaid *W.* in our ſaid court for his damages, which he had by reaſon of the treſpaſs and ejectment aforeſaid, and have that money before our juſtices at *Weſtminſter* at the ſaid time, to render to the ſaid *W.* for his damages aforeſaid, whereof the ſaid *S.* is convicted; and have there this writ. Witneſs, *&c.*

GEORGE the third, *&c.* To, *&c.* greeting. Whereas *A. G.* lately in our court before

Habere facias poſſeſſionem for executing

after a Sci. fa.'

fore our justices at *Westminster*, by the consideration of the said court recovered his term of and in one messuage, 28 acres of land, five acres of meadow, and 17 acres of pasture, with the appurtenances, in *C.* in your county, against *D. B.* late of, *&c.* merchant, which *W. N.* on the 1st day of *April* in the ——— year of our reign, at *C.* aforesaid, demised to the said *A.* to hold and enjoy to him and his assigns from the feast of the Annunciation of the blessed virgin *Mary* then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said *D.* put out and amoved the said *A.* from his possession, and ejected him from his said farm therein, which said *A.* after the said judgment was given, died, after whose death it is considered in our said court, that *C. W.* and *R. S.* executors of the testament and last will of the said *A.* have execution against the said *D.* of the term aforesaid yet to come of and in the said tenements with the appurtenances, by the default of the said *D.* We therefore command you, that without delay you cause the said *C.* and *R.* to have possession of the said term yet to come of and in the said tenements, with the appurtenances: And how you shall execute this our precept make appear to our justices at *Westminster* from the day of the Holy *Trinity* in three weeks; and have there this writ. Witness, *&c.*

Sci. fa.'

Rule *Nisi*, why writ of *Hab. Fac. Poss.* should not be set aside, and possession restored,

ftored, *&c.* difcharged; it appearing, that after plaintiff had obtained judgment, defendant brought writ of error, which was allowed, but entered into no recognizance, nor put in any (*k*) bail thereon, plaintiff previous to his procuring (*l*) cofts to be taxed on the final judgment, for want of defendant's entering into recognizance, required by (*m*) *ftat.* 16 & 17 *Car.* II. *chap.* 8. or bail within four days, took out writ of *Hab. Fac. Poff.* and by virtue thereof, took poffeffion of premiffes late in queftion, which the court held to be regular. *Barnes* 212.

(*k*) Writ of error is no *Superfedeas* without bail, which judge would have taken, if applied to. *Barnes* 212.

(*l*) Defendant fhould have applied to ftay execution, and the court would have obliged plaintiff to have procured his cofts to be taxed, without which the meafure or quantum of the recognizance could not be afcertained. *Barnes* 212.

(*m*) See 2 *Ventr.* 170.

COSTS for DEFENDANT in EJECT-MENT.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions	0	0	0	0	2	2	0	4	4
Appearance	0	2	0	0	3	8	0	5	4
Searching if judgment moved for	0	0	0	0	1	8	0	3	4
Copy declaration fol. 7	0	0	0	0	1	8	0	3	4
Common rule	0	0	0	0	0	6	0	1	0
General iſſue and rule	0	0	0	0	2	2	0	4	4
Paid for iſſue per ſheet beſides duty and warrant	0	0	4	0	0	4	0	0	4
Half conſent rule	0	2	6	0	2	6	0	2	6
Copy iſſue fo. 9	0	0	0	0	1	6	0	3	0
Inſtructions for brief	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	2	6	0	5	0
Letters	0	0	0	0	1	0	0	2	0

Of

Of writs of Scire facias.

A *Scire facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not ſued out execution within the year and a day. It alſo lies on a recognizance of bail; and in many other caſes it is called a *Scire facias*, becauſe of the words of the writ to the ſheriff, *viz.* *Quod Scire facias præfat. D.* the defendant, *quod ſit coram*, &c. *oſtenſurus ſi quid pro ſe habeat aut dicere ſciat quare*, &c. ſo as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet, becauſe the defendant may plead thereto, this *Scire facias* in law is accounted in nature of an action.

Sci. fa.' *after a year and a day.*

	s.	d.
Duty	2	0
Signing	1	4
Seal	0	7

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex*, greeting. Whereas *J. R.* lately in our court, *to wit*, in the term of St. *Hilary* in the —— year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court recovered againſt *H. N.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of forty pounds as ſixty-three ſhillings, which were adjudged to the ſaid *J. R.* in our ſame court for his damages which he had by occaſion of the detaining that debt, whereof

the ſaid *H.* is convicted, as by the record and proceedings thereof remaining in our ſame court before our juſtices at *Weſtminſter* manifeſtly appeareth; *yet* execution of the ſaid judgment ſtill remaineth to be made, as on the information of the ſaid *J. J.* we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſame court are rightly acted be demanded by a due execution, we command you, that, by good and lawful men of your bailiwic, you make known to the ſaid *H.* that he be before our juſtices at *Weſtminſter*, on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *J.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if it ſhall ſeem expedient to him; and have there the names of them, by whom you ſhall make known to him, and this writ. Witneſs Sir *William De Grey*, knight, at *Weſtminſter*, the ——— day of, *&c.*

Note; If the plaintiff has within the year and day ſued out an execution, got it returned and filed, and continued it on the roll by *Vic' non miſit breve*, it is ſufficient to warrant an execution after the year and day.

In this caſe one *Scire facias*, with a *Nihil* returned, is ſufficient.

This writ is to be ſigned by the prothonotary; then it is to be delivered to the ſheriff, and when returned, it muſt be entered on the

protho-

prothonotary's remembrance, and a rule muſt be given; after the rule is out, you ſign and docket the judgment, and enter it up in manner following:

Entry *of judgment on a* Scire facias.

Middleſex, *to wit*, The ſheriff was commanded, whereas *J. R.* lately in the court of our lord the now king, *to wit*, in the term of St. *Hilary* in the twelfth year of the reign of our ſaid lord the king, before Sir *Eardley Wilmot*, knight, and his companions, then juſtices of our ſaid lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *H. N.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of 40 *l.* as 63 *s.* which was adjudged to the ſaid *J.* in the ſame court for his damages which he had by occaſion of the detaining that debt whereof the ſaid *H.* is convicted, as by the record and proceedings thereof remaining in the ſame court of our ſaid lord the now king here, *to wit*, at *Weſtminſter* aforeſaid, manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, as on the information of the ſaid *J.* the king hath been given to underſtand; and becauſe, *&c.* That by good, *&c.* he make known to the ſaid *H.* that he be here at *Weſtminſter* at this day, *to wit*, [*the return*] to ſhew if any thing, *&c.* why the ſaid *J.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *J.* by *L. R.* his attorney, and

and offered himſelf on the fourth day againſt the ſaid *H.* in the plea aforeſaid, and he being ſolemnly demanded came not; and the ſheriff now ſendeth, that he hath nothing, *&c.* nor is he found, *&c.* It is therefore conſidered that the ſaid *J.* have execution againſt the ſaid *H.* for the debt and damages aforeſaid, by default of the ſaid *H.* *&c.*

	s.	*d.*
Duty	2	0
Signing writ	1	4
Seal	0	7
Return	1	0
Rule and duty	1	6
Signing judgment	2	0
Filing warrant	0	4
	8	9

Scire facias *in debt for an adminiſtrator.*

GEORGE the third, *&c.* To, *&c.* Whereas *H. S.* lately in our court, *to wit*, in the term of St. *Hilary* in the 13th year of our reign, before Sir *John Eardley Wilmot*, knt. and his companions, then our juſtices of the bench at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *N. C.* late of, *&c.* otherwiſe called, *&c.* as well a certain debt of 200*l.* as 63*s.* which in our ſaid court were adjudged to the ſaid *H.* for his damages which he had by occaſion of the detaining that debt whereof the ſaid *N.* is convicted, as by the record and proceedings thereof remaining in our ſaid court manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *H.* is dead,

dead, as on the information of *W. S.* widow, adminiſtratrix of all the goods and chattels which were of the ſaid *H.* at the time of his death, we have been given to underſtand; and becauſe we are willing that thoſe things which in our ſaid court have been rightly acted ſhould be demanded by a due execution, we command you, that by good and lawful men of your bailiwic you make known to the ſaid *N.* that he be before our juſtices at *Weſtminſter* on [*the return*] to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *W.* ought not to have execution againſt him, *&c. ut antea, fol.* 376.

Entry of a Scire facias in debt by an executor.

——*to wit*, The ſheriff was commanded, [*ut antea, fol.* 377.] yet execution ſtill remaineth to be made, and the ſaid *W.* is dead, as on the information of *R. W.* executor of the teſtament of the ſaid *W.* the king hath been informed; and becauſe, *&c.* by good, *&c.* make known to the ſaid *B.* [*ut antea, fol.* 377, 378.] And now here at this day came the ſaid *R.* by *J. S.* his attorney, and offered himſelf on the 4th day againſt the ſaid *B.* in the plea aforeſaid, and the ſaid *B.* being ſolemnly demanded came not; and the ſheriff now returneth, that he hath nothing, *&c.* nor is he found, *&c.* And upon this the ſaid *R.* bringeth here into court the letters teſtamentary of the ſaid *W.* by which it ſufficiently appeareth to the court here, that the ſaid *R.* is executor of the teſtament of the ſaid *W.* and thereof hath the adminiſtration, *&c.* and he prayeth execution againſt the

Nihil return'd.

Profert.

the ſaid *B.* of the debt and damages aforeſaid in form aforeſaid to be adjudged to him, *&c.*

Judgment. It is therefore conſidered that the ſaid *R.* have execution againſt the ſaid *B.* of the debt and damages aforeſaid, by the default of the ſaid *B.* *&c.*

Entry of a Scire facias *in caſe againſt an adminiſtrator.* ——*to wit*, The ſheriff was commanded, whereas *R. G.* lately in the court of our lord the king here, *to wit*, in the term of St. *Hilary* in the firſt year of his reign, before Sir *John Eardley Wilmot*, knt. and his companions, then juſtices of our lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court, recovered againſt *P. G.* late of *Southwark* in the county of *Surrey*, dyer, 18 *l.* which to the ſaid *R.* in the ſame court of our lord the king now here, were adjudged for his damages, which he had by occaſion of the not performing certain promiſes and undertakings made by the ſaid *P.* in his life-time to the ſaid *R.* whereof the ſaid *P.* was convicted, as by the record and proceedings thereof remaining in the ſame court of our lord the king now here, *to wit*, at *Weſtminſter* aforeſaid, manifeſtly appeareth; *Yet* execution of the ſaid judgment ſtill remaineth to be made, and the ſaid *P.* is dead, as on the information of the ſaid *R.* the king hath been informed; and becauſe, *&c.* that by good, *&c.* he ſhould make known to *A. G.* widow, adminiſtratrix (*n*) of the goods and

(*n*) Held upon argument of demurrer, that the calling defendant adminiſtrator in the declaration is a ſufficient averment of his being ſo, without ſetting out, that adminiſtration was committed to him. *Barnes* 159.

chattels which were of the ſaid *P.* who died inteſtate, *&c.* that ſhe be here at this day, *to wit*, on the morrow of *All Souls*, to ſhew if any thing, *&c.* why the ſaid *R.* ought not to have execution againſt her of the damages aforeſaid, of the goods and chattels which were of the ſaid *P.* at the time of his death, being in the hands of the ſaid *A.* to be adminiſtered, if ſhe hath ſo much in her hands, according to the form of the ſaid recovery, if, *&c.* And now here at this day came the ſaid *R.* by *L. R.* his attorney, and offered himſelf on the 4th day againſt the ſaid *A.* in the plea aforeſaid, and ſhe being ſolemnly demanded came not; and the ſheriff now returneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* Therefore, *as before*, the ſheriff was commanded, that by good, *&c.* he ſhould make known to the ſaid *A.* that ſhe ſhould be here at this day, *to wit*, on the [*the return*] to ſhew in form aforeſaid; at which day came the ſaid *R.* by his ſaid attorney; and hereupon the ſaid *A.* on the 4th day of the plea being ſolemnly demanded came not; and the ſheriff, *as before*, returneth that ſhe hath nothing, *&c.* nor is ſhe found, *&c.* and upon this the ſaid *R.* ſaith that after the judgment aforeſaid rendered the ſaid *P.* died inteſtate, and that adminiſtration of the goods and chattels which were of the ſaid *P.* at the time of his death, after the death of the ſaid *P.* was committed to the ſaid *A.* at *Southwark* aforeſaid; and the ſaid *R.* prayeth execution againſt the ſaid *A.* of the damages aforeſaid, of the goods and chattels

Return Nihil.

Alias ſci. fa.

Return Nihil.

chattels which were of the said *P.* at the time of his death, being in the hands of the said *A.* to be administered, if she hath so much thereof in her hands. It is therefore considered that the said *R.* have execution against the said *A.* of the damages aforesaid, of the goods and chattels which were of the said *P.* at the time of his death in the hands of the said *A.* to be administered, if she hath so much thereof in her hands, &c. by the default of the said *A.* &c.

Judgment.

Entry of a Scire facias *in debt against executors, and two* Nihils *returned.*

London, *to wit*, The sheriffs were commanded, whereas *R. F.* [*as before, to*] *Yet* execution of the said judgment still remaineth to be made, and the said *T.* is dead, as on the information of the said *R.* the king has been informed; and because, &c. that by good, &c. they make known to *A. J.* widow, and *M. J.* executors of the testament of the said *T.* that they be here at this day, *to wit*, from the day of *Easter* in 15 days to shew if any thing, &c. why the said *R.* ought not to have execution against them of the debt and damages aforesaid, of the goods and chattels of the said *T. J.* at the time of his death, in their hands to be administered, according to the form of the said recovery, if, &c. And now here at this day came the said *R.* by *W. E.* his attorney; and the said *A.* and *M.* on the fourth day of the plea being solemnly demanded came not; and the sheriffs now return, that the said *A.* and *M.* have nothing, &c. nor are they found, &c. Therefore, *as before*, the sheriffs are commanded,

manded, that by good, *&c.* they make known to the said *A.* and *M.* that they be here from the day of *Easter* in five weeks to shew in form aforesaid; at which day here came as well the said *R.* by his attorney aforesaid, as the said *A.* and *M.* by *F. K.* their attorney; and the sheriffs now return that they have nothing, *&c.* nor are they found, *&c. ut antea.*

Where one Sci. fa. return'd Nihil is sufficient.

In case of the death of either party judgment must be revived by *Scire facias.* In case of the death of the defendant you must have a *Scire feci* or two *Nihils* return'd; but in case of the plaintiff's death one *Nihil* is sufficient.

Where if plaintiff or defendant dies after interlocutory, and before final judgment, proceedings may be revived by Scire facias.

In all actions in this court, if any plaintiff shall happen to die after any interlocutory judgment, and before final judgment, the action shall not abate if such action might be originally maintained by the executors or administrators of such plaintiff; and if the defendant die after interlocutory judgment, and before final judgment, the action shall not abate, if such action might be originally prosecuted against the executors or administrators of such defendant; and the plaintiff, or his executors or administrators shall have a *Scire facias* against the defendant, his executors or his administrators, to shew cause why damages in such action should not be assessed and recovered; and if such defendant, *&c.* shall appear at the return of such writ, and not alledge matter sufficient to arrest the final judgment, or (being returned

warned, or upon two writs of *Scire facias* it be returned, that the defendant, *&c.* had nothing, *&c.*) shall make default, a writ of inquiry shall be awarded, which being executed and returned, final judgment shall be given. *Stat.* 8 & 9 *W.* 3. *c.* 9. *sect.* 6, 15.

A Scire facias where the plaintiff died after interlocutory judgment, and before final judgment.

GEORGE the third, *&c.* To the sheriffs of *London*, greeting. Whereas *G. K.* in his life-time, lately in our court, *to wit*, in the term of *Easter* in the 7th year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, then our justices of the bench at *Westminster*, by our writ had impleaded *M. G.* late of *London*, widow, declaring in the same plea against her, that whereas the said *M.* [*setting forth the whole declaration to*] and thereof he brought suit, *&c.* And it was proceeded in our same court in such manner, that in the term of the holy *Trinity* in the 6th and 7th years of our reign, by the same court it was considered, that the aforesaid *G.* ought to have recovered his damages against the said *M.* occasioned by not performing the promises and undertakings aforesaid. But because it was not known what damages the said *G.* had sustained on occasion of not performing the promises and undertakings aforesaid; therefore the sheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwic they should diligently inquire, what damages the said *G.* had sustained, as well on occasion of the not performing the promises and undertakings afore-

Recital of the interlocutory judgment.

And award of inquiry.

aforesaid, as for his costs and charges by him about his suit in that behalf laid out; and the inquiry which the sheriffs should thereof make, they should make manifest to our justices at *Westminster* aforesaid, from the day of St. *Michael* in three weeks then next following, under the seal, *&c.* and the seals, *&c.* as by the record and process thereof remaining in our same court, *to wit*, at *Westminster* aforesaid, may plainly appear. The inquiry nevertheless of the damages aforesaid yet remaineth to be made, and the aforesaid *G.* at *London* aforesaid made his testament and last will in writing, and thereby constituted and appointed *E. K.* his wife sole executrix thereof; and afterwards, and after the judgment aforesaid given at *London* aforesaid died, after whose death the said *G.* proved the said testament in due form of law, and took the burthen of the execution of that testament upon her, as by the letters testamentary thereof here in court by the said *E.* produced to our justices sufficiently appeareth; and because we will those things which in our same court are rightly acted be duly carried into execution, we command you, that by good and lawful men of your bailiwic you make known to the said *M.* that she be before our justices at *Westminster* on the morrow of St. *Martin*, to shew if she hath, or knoweth any thing to say for herself, why the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be

Death of plaintiff, executrix proves his will.

Profert.

Sci. fa.

 assessed

affeffed and adjudged to the faid *E.* according to the form of the ftatute in this cafe lately made and provided, if to her it fhall feem expedient; and have you there the names of them by whom you fhall make it known to her, and this writ. Witnefs Sir *John Eardley Wilmot*, knight, at *Weftminfter*, the 20th day of *October* in the 7th year of our reign.

If a *Nihil* be returned, according to the above ftatute, an *Alias fcire facias* muft iffue; you muft enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

Entry of the above Scire facias.

Firft Scire facias *roll.*

London, *to wit*, The fheriffs were commanded, whereas *G. K.* lately in the court of our lord the now king, *to wit*, in *Eafter* term the 7th year of the reign of our faid lord the king, before Sir *John Eardley Wilmot* knt. and his companions, then juftices of our faid lord the king of the bench here, *to wit*, at *Weftminfter*, by the writ of our faid lord the king, had impleaded *M. G.* late of *London*, widow, declaring in the fame plea againft her, that whereas [*fetting forth the whole declaration, as in the* Sci. fa.] And it was proceeded in the fame court of our faid lord the king in fuch manner, that in the term of the holy *Trinity* in the 6th and 7th years of the reign of our faid lord the king, by the fame court it was confidered, that the aforefaid *G.* ought to have recovered his damages againft the faid *M.* occafioned by not performing the promifes and undertakings aforefaid:

faid: But becaufe its was not known what damages the faid *G.* had fuftained on occafion of not performing the faid promifes and undertakings, therefore the then fheriffs were commanded, that by the oath of good and lawful men of their bailiwic they fhould diligently inquire what damages the faid *G.* had fuftained, as well on occafion of the not performing the promifes and undertakings aforefaid, as for his cofts and charges by him about his fuit in that behalf laid out; and the inquiry which the fheriffs fhould thereof make, they fhould make manifeft to the juftices of our faid lord the king, *to wit*, at *Weftminfter* aforefaid, from the day of Saint *Michael* in three weeks then next following, under the feal, *&c.* and the feals, *&c.* as by the record, and procefs thereof in the fame court of our faid lord the king here, *to wit*, at *Weftminfter* aforefaid remaining, may plainly appear. The inquiry neverthelefs of the damages aforefaid yet remaineth to be made, and the faid *G.* at *London* aforefaid made his teftament and laft will, and thereby conftituted and appointed *E. K.* his wife fole executrix thereof; and afterwards, and after the judgment aforefaid given at *London* aforefaid, died, after whofe death the faid *E.* proved the faid teftament in due form of law, and took the burden of the execution of that teftament upon her, as by the letters teftamentary thereof here, *to wit*, at *Weftminfter* aforefaid, by the faid *E.* produced to the faid juftices of our faid lord the king fufficiently appeareth. And becaufe, *&c.* that

by good, &c. the said sheriffs should make known to the said *M.* that he should be here at this day, *to wit*, on the morrow of St. *Martin*, to shew if any thing, &c. why the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be assessed and adjudged to the said *E.* according to the form of the statute in this case lately made and provided, *if*, &c. And now here at this day, *to wit*, on the morrow of St. *Martin* aforesaid, cometh the aforesaid *E.* by *W. T.* her attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly called cometh not; and the now sheriffs do return, that she hath nothing, &c. nor is to be found, &c. Therefore, as before, the sheriffs are commanded, that by good, &c. they make known to the said *M.* that she be here in eight days of St. *Hilary*, to shew in manner aforesaid.

Return Nihil.

Second Scire facias *roll.*

London, *to wit*, Heretofore, as it appeareth in this same term, in the roll it is thus contained, *to wit*, London, *to wit*, The sheriffs were commanded [*the last entry* verbatim, *and then go on.*] At which day here cometh the said *E.* by *W. T.* her said attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly called cometh not; and the sheriffs, as before, do return, that she hath nothing, &c.

Return Nihil.

nor

nor is to be found, &c. And hereupon the ſaid *E.* prayeth, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid, in the action aforeſaid ſuſtained, may be aſſeſſed and adjudged unto her: Therefore it is conſidered, that the damages aforeſaid, by him the ſaid *G.* on occaſion of not performing the promiſes and undertakings aforeſaid ſuſtained, be aſſeſſed and adjudged unto the ſaid *E.* according to the form of the ſtatute in that caſe made and provided, by default; and becauſe it is ſtill unknown what damages the ſaid *G.* hath ſuſtained by reaſon of the premiſſes aforeſaid; therefore, as before, the ſheriffs are commanded, that by the oath of good and lawful men of their bailiwic, they diligently inquire what damages the ſaid *G.* hath ſuſtained, as well by reaſon of the ſaid premiſſes, as for his coſts and charges by him laid out about his ſuit in that behalf; and the inquiſition which they ſhall thereupon make, that they make manifeſt to the juſtices of the lord the king here, *to wit,* at *Weſtminſter* aforeſaid, in eight days of the purification of the bleſſed *Mary*, under the ſeal, &c. and the ſeals, &c. At which day here cometh the ſaid *E.* by her ſaid attorney, and the ſheriffs, *to wit*, Sir *George Champion*, knight, and *Robert Cater*, eſq; now return here a certain inquiſition taken before them at *Guildhall* in the pariſh of St. *Lawrence Jewry* in the ward of *Cheap* of the ſame city, on the 4th day of *February* laſt paſt, by the oath of 12, &c. by which

Judgment that damages be aſſeſſed.

Inquiry awarded.

Return of inquiry.

it is found, that the said *G.* by reason of the premisses sustained damages, besides his costs laid out by him about his suit in that behalf to 105*l.* and for his costs and charges aforesaid to 27*s.* 4*d.* Therefore it is considered, that the said *E.* executrix aforesaid, do recover against the said *M.* the said damages to 100*l.* 7*s.* 4*d.* found by the said inquisition in manner aforesaid; and also 11 l. 2 *s.* 8 *d.* adjudged by the court here to the said *E.* at her request, for the increase of the costs and charges aforesaid; which said damages amount in the whole to 117*l.* 10*s.* And the said *M.* in mercy, *&c.*——*H.* [illegible] *G.* 2. *R.* 341.

Judgment signed 17 Apr. 1737.

Mercy.

Entry of Scire facias *against bail.*

Note; the first writ is made out by the filacer.

The second Sci. fac. *is signed by the prothonotary.*

Middlesex, *to wit*, The sheriff was commanded, whereas *J. H.* of, *&c.* and *S. A.* of, *&c.* lately, that is to say, in *Michaelmas* term in the 7th year of the reign of our sovereign lord the now king before Sir *John Eardley Wilmot*, knt. and his companions, then our said lord the king's justices of the bench at *Westminster*, came in their proper persons, and acknowledged, and each of them by himself acknowledged, to owe to *H. D.* the sum of 110*l.* which said sum of 110*l.* they the said *J.* and *S.* for themselves and their heirs willed and granted, and each of them, for himself and his heirs, willed and granted to be made of their and each of their land, and chattels, and to be levied to the use and behoof of the said *H.* And whereas *J. H.* of, *&c.* lately, that is to say, in the same *Michaelmas* term in the 7th year aforesaid, in the said

ſaid court of our ſaid lord the king, before Sir *John Eardley Wilmot*, knt. and his companions, then our ſaid lord the king's juſtices of the bench at *Weſtminſter*, came in his proper perſon, and acknowledged himſelf to owe to the ſaid *H. D.* the ſum of 220*l.* which ſaid ſum of 220*l.* the ſaid *J. H.* for himſelf and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the uſe and behoof of the ſaid *H.* under this condition, that if judgment ſhould happen [illegible] given for the ſaid *H.* againſt the ſa[illegible] court, in a certain plea of debt upon demand[illegible] *l.* proſecuted in the ſame court by the ſaid *H.* againſt the ſaid *J. H.* that then the ſaid *J. H.* would ſatisfy the ſaid *H.* his ſaid debt and damages on occaſion of detaining the ſaid debt to be adjudged to the ſaid *H.* againſt the ſaid *J. H.* in the ſame court in the plea aforeſaid, or render his body on that occaſion to the priſon of our ſaid lord the king of the *Fleet*; and although the ſaid *H.* afterwards, that is to ſay, in the ſame *Michaelmas* term in the ſaid 7th year of the reign of our ſaid lord the king, in the ſame court, before the ſaid Sir *John Eardley Wilmot*, knt. and his companions, then our ſaid lord the king's juſtices of the bench aforeſaid, by the judgment and conſideration of the ſame court, recovered againſt the ſaid *J. H.* as well his ſaid debt of 124*l.* as 16*l.* 19*s.* which were adjudged to the ſaid *H.* in the ſame court for his damages, which he had on occaſion of detaining that debt, whereof the

the said *J. H.* is convicted, as by the record and proceedings thereof now remaining in the same court at *Westminster* aforesaid is manifestly apparent. Nevertheless the said *J: H.* hath not yet satisfied the said *H.* for his debt and damages aforesaid, nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as our said lord the king has received information from the said *H.* And because, &c. that by good, &c. he should make known to the said *J. H. J. H.* and *S.* that they be here at this day, that is to say, on the morrow of the holy *Trinity*, to shew if any thing, &c. that is to say, the said *J. H.* why the said 110*l.* by him in form acknowledged should not be made of his lands and chattels; and the said *S.* why the said 110*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and the said *J. H.* why the said 220*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and levied to the use and behoof of the said *H.* according to the form of the said recognizance, if, &c. And now at this day the said *H.* cometh here by *L. R.* his attorney, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid; and they, though solemnly called, came not; and the sheriff now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any of them found, &c. Therefore, as before, the sheriff was commanded,

Return Nihil.

Alias *awarded.*

manded, that by good, &c. he should make known to the said *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity* in three weeks, to shew in form aforesaid; at which day the said *H.* cometh here by his attorney aforesaid, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid, and they, though solemnly called, come not; and the sheriff, as before, now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the said *H.* prayeth execution against the said *J. H. S.* and *J. H.* *to wit*, against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, according to the form of the recognizance, to be adjudged to him, &c. Therefore it is considered, that the said *H.* have execution against the said *J. H S.* and *J. H.* that is to say, against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, by default, &c.

Judgment.

GEORGE, &c. To the sheriff of *Middlesex*, greeting. Whereas *S. N.* of the city of *Coventry* in the county of the same city, cordwainer, and *J. S.* of the same city in the

Sci. fa. *against bail on a* Habeas corpus *upon a recognizance taken before a com-*

missioner, defendant in person.

Stat. 4 W. & M. c. 4.

the county of the same city, farrier, heretofore, *to wit*, on the fourth day of *May* in the ——— year, &c. before *S. W.* esq; one of the commissioners by our justices at *Westminster* appointed, according to the form of the statute in this case lately made and provided, became bail, and each of them became bail for *J. F.* in the sum of 50 *l.* And whereas the said *J. F.* on the same 4th day of *May* in the ——— year of, &c. aforesaid, before the same commissioner acknowledged, that he owed to *B. C.* the sum of 100 *l.* Which said sum of 50 *l.* the said *S.* and *T* acknowledged, and each of them acknowledged to be made of their, and each of their lands and chattels; and which said sum of 100 *l.* the said *J. S.* acknowledged to be made of his lands and chattels, and levied to the use and behoof of the said *B.* upon this condition, that the said *J. F.* should appear in our court before our justices at *Westminster*, at the suit of the said *B.* in a certain plea of trespass and assault to the damage of 50 *l.* And if in our same court judgment should happen to be given in the said plea for the said *B.* against the said *J. F.* then the said *J. F.* should satisfy all the damages which should be adjudged to the said *B.* in our same court in the plea aforesaid, or render his body on that occasion to the prison of the *Fleet*, as by the record and proceedings thereof remaining in our same court manifestly appeareth. And although the said *B.* in the term of *Easter* in the ——— year of, &c. before Sir ———, knight, and his companions,

panions, our justices of the bench at *Westminster*, by the consideration of the same court recovered against the said *J. F.* 19 *l.* which in our same court were adjudged to the said *B.* for his damages which he had by occasion of the said trespass and assault whereof the said *J. F.* is convicted, as by the record and proceedings thereof in our same court also remaining manifestly appeareth; *But* the said *J. F.* hath not satisfied the said damages to the said *B.* nor rendered his body on that occasion to the said prison of the *Fleet*, according to the form of the said recognizance, as from the information of the said *B.* we have been given to understand. And because we will that those things which in our said court are rightly acted and acknowledged, be brought to a due execution, we command you, that by good and lawful men of your bailiwic you make known to the said *S. J. S.* and *J. F.* that they be before our justices at *Westminster* on [*the return*] to shew if any thing they have, or know to say for themselves, *to wit*, to the said *S.* why the said 50 *l.* by him in form aforesaid acknowledged ought not to be made of his lands and chattels; to the said *J. S.* why the said 50 *l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and to the said *J. T.* why the said 100 *l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and be levied to the use and behoof of the said *B.* according to the form of the said recognizance, if it shall seem expedient to him; and

 have

have there the names of them by whom you ſhall make known to them, and this writ. Witneſs, *&c.*

Intrat. Scire fieri & inquir'. *Award of Fi. fa. in debt for executors against an executrix.*

Cambridge, *to wit*, The ſheriff was commanded, that of the goods and chattels which were of *Henry Cromwell*, eſq; deceaſed, lately called *Henry Cromwell* of *Wicken* in the county of *Cambridge*, eſq; in the hands of *Elizabeth Cromwell* late of *Spinney* in the county aforeſaid, widow, executrix of the teſtament of the ſaid *Henry* to be adminiſtered, being in his bailiwic, he ſhould cauſe to be made as well a certain debt of 200*l.* which *Christopher Wynne*, eſq; and *Sarah* his wiſe, *Thomas Percival*, gentleman, and *Mary* his wiſe, and *Thomas Balls*, gentleman, which ſaid *Sarah*, *Mary*, and *Thomas Balls*, were executors of the teſtament of *George Balls*, gentleman, deceaſed, in the court of our lord *Charles* the ſecond, late king of *England*, before the juſtices of the ſaid late king at *Weſtminſter*, recovered againſt the ſaid *Elizabeth*, as 40*s.* which in the ſame court of the ſaid late king were adjudged to the ſame *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occaſion of the detaining that debt, to be levied of the ſame goods and chattels, if the ſaid *Elizabeth* had ſo much thereof in her hands to be adminiſtered; and if ſhe had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *Elizabeth*; and that he ſhould have that money here from the day of the holy *Trinity* in three weeks, to render to the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*,

De bonis teſtatoris ſi, &c.

Si non &c. Damna de bonis propriis.

Mary, and *Thomas*, for the debt and damages aforesaid, whereof the said *Elizabeth* is convicted. And now here at this day came the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, by *Richard Puplet* their attorney; and the sheriff now returneth, that he, by virtue of the said writ to him directed, had caused the said 40*s.* being the damages aforesaid, to be made of the proper goods and chattels of the said *Elizabeth*, which said 40*s.* he hath here at this day to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the damages aforesaid; and the said sheriff further returneth to the justices here, that there are no goods or chattels in his bailiwic which were of the said *Henry*, in the hands of the said *Elizabeth* to be administered, whereof he could cause to be made the said debt and damages, or any part thereof; and because the said return is conceived to be made in delay of the execution of the said judgment as to the debt aforesaid; and it is testified in the same court of the king here, on the behalf of the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, that the said *Elizabeth* hath sold, eloined, wasted, converted and disposed to her own proper use divers goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, to the value of the debt aforesaid, to the intent that execution of the said debt might not be thereof made; and our said lord the king being unwilling that those

Return.

Damages levied de bonis propriis.

Nulla bona testatoris.

Devastavit *suggested.*

Fieri facias pro debito guardia.

those things, which in the ſame court of the ſaid late [illegible] were rightly acted and adjudged, ſhould be rendered void by art or deceit; therefore the ſheriff is commanded, that of the goods and chattels which were of the ſaid [illegible] at the time of his death in the hands of the ſaid [illegible] to be adminiſtered, being in his bailiwick, he ſhould cauſe to be made the [illegible], if it may be thereof levied, and have the money thereof levied here, on [illegible] to render to the ſaid *Chriſtopher* and [illegible], [illegible] and *Mary*, and *Thomas*, for the [illegible]; and if

Si debitum levari non poteſt tunc ſi conſtat per inquiſitionem quod def. devaſt'.

the ſaid debt cannot be levied in form aforeſaid, then if it can appear to the ſame ſheriff by inquiſition on that behalf to be taken, upon the oath of good and lawful men of his bailiwick, or by any other method whereby he may be the better certified thereof, that the ſaid *Elizabeth* hath ſold, eloined, waſted or converted, and diſpoſed to her own uſe, goods and chattels which were of the ſaid *Henry* at the time of his death, and have come to the hands of the ſaid *Elizabeth* to be

Sci. fa.

adminiſtered, then by good, *&c.* he ſhould make known to the ſaid *Elizabeth*, that ſhe be here at the time aforeſaid, to ſhew, if, *&c.* why the ſaid *Chriſtopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution againſt her of the debt aforeſaid, to be levied of the proper goods and chattels of the ſaid *Elizabeth*, according to the form of the ſaid recovery, if, *&c.*

Cliſt's Entr. 662.

Notice of executing Sci' fier Inquir'.

Like notice muſt be given of executing a *Sci. fa. [illegible] inquir.* as is given of trial, or of executing

executing a writ of inquiry or damages. *Barnes* 304. *Pract. Reg. C. P.* 379. *Rep. & Cas. of Pract. C. P.* 1.

In the Common Pleas.

Hilary——George *the third.*

Declaration on a Scire facias upon a judgment recovered against the defendant and his wife (since deceased) executrix.

Middlesex, *to wit.* IT was commanded to the sheriff, Whereas *W F.* esq; in the court of our sovereign lord *George* the third, king of *Great Britain*, &c. *to wit*, in *Easter* term in the seventh year of our reign, before Sir *John Eardley Wilmot*, knight, and his companions, our justices of the bench at *Westminster*, by the consideration of the said court had recovered against *C M.* late of *Westminster* in the county of *Middlesex*, esq; and the lady *E. M.* his wife, executrix of the testament and last will of *C.* lord *M* her late husband, deceased, lately called *C.* lord *M.* as well a certain debt of 391 *l.* as 50 *s.* which in the said court of the said king were adjudged to the said *W.* for his damages by occasion of the detaining that debt to be levied of the goods and chattels which were of the said *C.* lord *M.* at the time of his death in the hands of the said *C. M.* and lady *E. M.* to be administered, if they had so much in their hands; and if they had not, then the damages aforesaid to be levied of the proper goods and chattels of the said *C. M.* and lady *E. M.* whereof they were convicted, as by the records and proceedings

thereupon in the court of our lord the present king now here remaining manifestly appeareth; *yet* execution of the said judgment still remaineth to be done, and the said lady *E. M.* is dead, as the king hath heard from the information of the said *W.* And because, *&c.* by good, *&c.* he should make known to the aforesaid *C. M.* administrator of the goods and chattels which were of the said lady *E. M.* and administrator, with the will of the said *C.* lord *M.* annexed, of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, unadministered by the said lady *E. M.* that she should be here at this day, *to wit*, on the octave of the Purification of the blessed *Mary*, to shew if any thing, *&c.* why the said *W.* ought not to have execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, being in the hands of the said *C. M.* to be administered, according to the form of the recovery aforesaid, if, *&c.* And now here at this day comes as well the said *W.* by *F. P.* his attorney, as the said *C. M.* summoned, *&c.* by *J. S.* his attorney; and the sheriff, *to wit*, *J. R.* esq; and *T. C.* esq; now return, that he, by virtue of the said writ to him directed by *R. H.* and *S. W.* good, *&c.* had made known to the said *C. M.* that he should be here at this day to shew in form aforesaid, *&c.* And upon this the said *W.* prayeth execution to be adjudged to him against the said *C. M.* of the

Death of the wife.

Defendant administrator of his wife, and administrator de bonis non, &c. *of h.r testator.*

the debt and damages aforesaid, to be levied of the goods and chattels which were of the said *C.* lord *M.* at the time of his death not administered by the said lady *E. M.* in the hands of the said *C. M.*

And the said *C. M.* by *J. S.* his attorney cometh and saith, that the said *W.* ought not to have his execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, because he saith no goods or chattels which were of the said *C.* lord *M.* at the time of his death not administered by the said lady *E. M.* at the time of the death of the said *E.* or at any time afterwards, have come to the hands of the said *C. M.* to be administered; and that he the said *C. M.* hath not, nor on the day of suing forth the said writ, nor at any time afterwards, had any goods or chattels which were of the said *C.* lord *M.* at the time of his death in the hands of him the said *C. M.* to be administered, whereof he could have satisfied the said *W.* of the debt and damages aforesaid, or any parcel thereof: And this he is ready to verify: Wherefore he prayeth judgment, if the said *W.* ought to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said *C.* lord *M.* at the time of his death.

And the said *W.* saith, that he by any thing before alledged ought not to be barred from having his execution against the said *C. M.* for the debt and damages aforesaid,

 of

of the goods and chattels which were of the said *C.* lord *M.* at the time of his death, because, he saith, that the said writ of the said *W.* was sued forth on the 24th day of *January* in the year of his present majesty's reign; and that the said *C. M.* on the said day of suing forth the said writ had diverse goods and chattels which were of the said *C.* lord *M.* at the time of his death in the hands of the said *C. M.* to be administered, to the value of the debt and damages aforesaid, wherewith he could have satisfied the said *W.* for the debt and damages aforesaid, *to wit*, at *Westminster* aforesaid; and this he prayeth may be inquired of by the county.

In the Common Pleas.

Michaelmas ——— George the *third.*

Declaration on a Sci. fa. *upon a judgment for assets* in futuro *against an executrix.*

London, IT was commanded to the sheriffs, Whereas *M. G.* widow, *to wit,* and *N. V.* lately in the court of our lord the present king here, before the justices of our lord the present king of the bench here, *to wit*, at *Westminster*, by the judgment of the said court had recovered against *K. M.* late of *London*, widow, executrix of the testament and last will of *H. M.* late of *London*, esq; her late husband deceased, 1480*l.* for their damages which they had sustained, as well by occasion of the not performing certain promises and undertakings made by

 the

the ſaid *H.* in his life-time to the ſaid *M.* and *N.* in *London*, to wit, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, as for their coſts and charges by them the ſaid *M.* and *N.* about their ſuit in that behalf expended, adjudged to the ſaid *M.* and *N.* by the ſaid court of our ſaid lord the king, before the juſtices of our ſaid lord the king at *Weſtminſter*, to be levied of the goods and chattels which were of the ſaid *H.* at the time of his death, which after the giving the ſaid judgment ſhould come to the hands of the ſaid *K.* to be adminiſtered, whereof ſhe was convicted, as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king before the juſtices of our ſaid lord the king here, *to wit*, at *Weſtminſter*, aforeſaid manifeſtly appeareth. *And whereas*, after the ſaid judgment was given, diverſe goods and chattels which were of the ſaid *H.* at the time of his death, to the value of the damages aforeſaid and above, have come to the hands of the ſaid *K.* to be adminiſtered, out of which ſhe could have ſatisfied the ſaid *M* and *H.* of their damages aforeſaid, as the king has been given to underſtand by the information of the ſaid *M.* and *N.* And becauſe, *&c.* that by good, *&c.* they ſhould give notice to the aforeſaid *K.* that ſhe might be here at this day, *to wit*, on the morrow of St. *Martin*, to ſhew if any thing, *&c.* why the ſaid *M.* and *N.* ought not to have execution againſt her of the damages aforeſaid of the goods and chattels which were of the ſaid *H.* at the time of his

Suggeſtion of aſſets ſince come to defendant's hands.

 death,

death, which after the ſaid judgment was given have come to the han's of the ſaid K. to be adminiſtered, according to the form and effect of the recovery, if, &c. And now here at this day came as well the ſaid M. and N. by J. H. their attorney, as the ſaid K. by J. S. her attorney; and the ſaid M. and N. offered themſelves on the fourth day againſt the ſaid K. of the plea aforeſaid; and the ſheriffs now returned, that by J. N. and R. R. good, &c. they had given notice to the ſaid K. M. to be here at this day, to ſhew, &c. and upon this the ſaid M. and N. pray execution againſt the ſaid K. of the damages aforeſaid, of the goods and chattels which were of the ſaid H. at the time of his death, which after the ſaid judgment was given have come to the hands of the ſaid K. to be adminiſtered, to be adjudged to them, &c. Upon which the ſaid K. ſaith, that after the ſaid judgment was given no goods or chattels which were of the ſaid H. at the time of his death, have come to the hands of the ſaid K. to be adminiſtered, whereof ſhe could have ſatisfied the ſaid M. and N. of their damages aforeſaid, or of any parcel thereof; and of this ſhe putteth herſelf upon the country; and the ſaid M. and H. likewiſe: Therefore the ſheriffs are commanded, that they cauſe to come here twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Becauſe as well, &c.

Defendant appears.

Sheriffs return Scire fec.

Defendant pleads no aſſets come to hand.

Iſſue.

You enter the writ of *Scire facias* and *Alias*, if any, on the prothonotary's remembrance

brance roll, and give a rule thereon for the defendant to appear.

The plaintiff on motion in the treasury may quash his own *Scire facias* without paying costs, though the defendant has appeared; for the practice of this court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

No costs on Sci. fa. *till plea.*

In a *Scire facias* to revive a judgment it is not necessary to insert the particular term in which the judgment was given *Barnes* 431.

Term of the judgment not necessary.

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster* 2. *c.* 45. 2 *Inst.* 469, 470, *vide Salk.* 600.

If there be a *Cesset executio* for a year, the plaintiff may within the next year take out execution without a *Scire facias.*

Where no Sci. fa. *if a* Cesset execut.'

If the plaintiff be delayed from taking out execution within the year and a day by an injunction out of *Chancery*, he cannot after the injunction dissolved take out execution without reviving the judgment by *Scire facias*; but it will be no breach of the injunction to take out execution within the year, so as it be not executed, which will save the trouble of bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non misit breve.* 6 *Mod.* 288. But see *Rep. and Cas. of Pract. C. P.* 82. & *Pract. Reg. C. P.* 377. Both which seem *contra.*

Scire facias *must be sued out tho' execution stayed by injunction.*

Defendant charged in execution 4 years after judgment without Sci. fa.'

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the *Fleet* for another cause was brought into court by *Habeas corpus*, where he admitting himself to be the same person was committed in execution *moraturus quousque—Nota post annum & diem alsque novo Scire facias. Dy.* 214. *pl.* 47.

On death of defendant.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *Scire facias.*

Or of plaintiff Sci. fa. *must issue.*

If a man has judgment for debt or damages, and dies before execution, his executor shall not have execution, though it be within the year, without a *Scire facias.*

Vide antea fol. Death of either party after interlocutory judgment, and before final judgment.

But not on death of one where there are many plaintiffs or defendants.

If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *Scire facias*; so if one of the defendants die. *Moor* 367. *pl.* 503. *Noy* 150. 5 *Mod.* 339. 7 *Mod* 68. But a suggestion of the death must be made on record. *Salk.* 319.

Into what county Sci. fa. *on a judgment must issue.*

On a judgment wherein the action was laid in *Cumberland* a *Scire* was brought in *Westmoreland*, and judgment was had thereon; but that judgment was reversed on error in the *Exchequer* chamber, for a *Scire facias* must be brought in the same county where the first action was laid. *Hob.* 4. *Cro. Car.* 228, & *vide Yel.* 218. *S. C.* for the diversity

ty between a *Sci e facias* on a judgment, and [an] action of debt on a judgment.

If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as taken in *London*, it was resolved by all the prothonotaries, that the *Scire facias* should be directed to the sheriffs of *London*, and not to the sheriff of *Middlesex*, *Bro. Abr. fol* 66. *b pl* 85. though the recognizance is not a perfect record 'till it be entered upon the roll; yet when it is entered, it is a record from the first acknowledgment, and binds persons and lands from that time, for it is the acknowledgment before the judge that gives it the force of a record, though the inrolment be necessary for the testification and perpetuity of it. *Hob.* 195. But in the case of *Andrews* and *Harborne* the prothonotaries certified, that upon such recognizance the *Scire facias* might be brought in *Middlesex*, or in *London*; and that it used to be brought either in *London* or *Middlesex*. *Roll. Abr* 891. *All.* 12. So where bail taken by commissioners in the county of *York*, a *Scire facias* lies against them either in the county of *York* or *Middlesex*. 2 *Lutw.* 1287. *Vide Salk.* 564, 600, 639.

Into what county on a recognizance.

Leave to amend *Sci. fa* against bail, sometimes refused, where advantage of surrendering principal would thereby be lost. *Barnes* 26, 27.

Outlawry.

Outlawry.

IN the following actions, *viz.* Trespass, assault, case, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not easily to be arrested, and hath not sufficient estate in the county whereby he may be summoned, *&c.*

Deft. sooner outlawed in **London** *than in another county.*

If the action be laid in *London*, the defendant will be sooner outlawed than in another county, in regard that between the teste and return of the exigent there must be five county days, which are held every month; and the *Hustings* in *London*, which answer the county days, are held every fortnight.

Of the Præcipe *for the original.*

You cannot outlaw a man on process with *Acetiam*; and if your original be only a *Clausum fregit*, the defendant may reverse the outlawry without bail, and therefore the best way is to make out a *Præcipe* for a special original, which is in this form, according to the nature of the action.

A Præcipe *for a special original on an* Indeb. assumpsit *for the charges of a funeral.*

London, If *T. J.* shall make, *&c.* then put, *&c. C. W.* late of *New Bond-street* in the county of *Middlesex*, upholster, that he be before our justices at *Westminster*, on the morrow of the Purification of the blessed *Mary*, to shew wherefore whereas the said *C.* on the 10th day of *August* in the year of our Lord 1766, at *London, to wit*, in the parish of St. *Mary le Bow* in the ward of *Cheap*, was indebted to the said *T.* in 60*l.* lawful money of *Great Britain*, as well for

work,

work, labour and care of the ſaid *T.* about the funeral of one *R. F.* deceaſed, by the ſaid *T.* before that time, at the ſpecial inſtance and requeſt of the ſaid *C.* done and performed, as for diverſe materials and neceſſary things, by the ſaid *T.* at the like ſpecial inſtance and requeſt of the ſaid *C.* at the coſts and charges of the ſaid *T.* on that occaſion found and provided; and by the ſaid *T.* in and about that funeral uſed and expended; and being ſo indebted the ſaid *C.* in conſideration thereof afterwards, *to wit*, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would well and truly pay to the ſaid *T.* the ſaid 60*l.* when he ſhould be thereunto afterwards required. *And also whereas* the ſaid *C.* afterwards, *to wit*, on the day and year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *T.* at the like ſpecial inſtance and requeſt of the ſaid *C.* had before that time done and performed other work and labour in and about the funeral of one *R. F.* deceaſed, and at the like ſpecial inſtance and requeſt of the ſaid *C.* had found and provided at the coſts and charges of him the ſaid *T.* diverſe materials and neceſſary things on that occaſion, and had expended and uſed the ſaid materials and neceſſary things laſt mentioned in and about the laſt mentioned funeral, undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *C.* would, when he ſhould be thereunto

Quantum meruit *thereon.*

thereunto required, well and truly pay and content to the said *T.* not only all such sums of money as the said *T.* reasonably deserved to have for his said work and labour last above mentioned, but also all such sums of money as the said materials and necessary things last mentioned at the time of the finding and providing thereof, as aforesaid, were reasonably worth; and the said *T.* averreth, that he reasonably deserved to have for his last mentioned work and labour 20*l.* of like lawful money; and that the materials and necessary things last mentioned were at the time of the finding and providing thereof, as aforesaid, reasonably worth 40 *l.* of like lawful money, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, of which afterwards, that is to say, on the same day and year aforesaid, the said *C.* there had notice: *Nevertheless* the said *C.* no ways regarding his said promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T.* in this behalf, has not paid to the said *T.* the said several sums of money, or any part thereof, nor any ways contented him for the same (although the said *C.* afterwards, *to wit*, on the 12th day of *August* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was thereunto requested by the said *T.*) But he hath hitherto refused, and still doth refuse to pay the same to the said *T.* to the damage of the said *T.* of 6-*l.* as he saith,

Breach.

Returnable, &c.

You

You carry this *Præcipe* to the cursitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the cursitor before the essoin-day of a term, he will make the original returnable on any return of the precedent term. You may return the original of course thus:

Of returning the original.

Pledges of prosecuting { *John Doe,* *Richard Roe.* }

The within named *C. W.* hath nothing in our bailiwic by which he can be attached [or * summoned]

J. B. esq; and *W. W.* esq; } sheriffs.

You must carry the original thus returned to the filacer of the county, who will make out a *Capias*, *Alias* and *Pluries* all together, if the original will bear it, each of which writs must have 15 days between the teste and return. After the *Capias*, *Alias* and *Pluries* are sealed, you may return them severally, after this manner:

Of making out the Capias, Alias *and* Pluries.

The within named *C. W.* is not found in our bailiwic.

Of returning them.

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* *Vide antea fol.*

The

The anſwer of
J. B. eſq; and *W. W.* eſq; } ſheriffs.

I apprehend the plaintiff ought to make an affidavit of his debt on ſuing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if poſſible, and let them be returned by the ſheriff.

Warrant of attorney to be filed of the ſame term with the exigent.

Every attorney ſhall file his warrant of attorney of the term wherein any *Exigent* is awarded, upon pain of 40*s.* for every time he offends, and is attainted by due examination of the juſtices of this court; ſuch warrant to be filed upon or before the eſſoin-day of every *Trinity* term, and within 21 days after the end of every other term. *Hil.* 14, 15 *Car.* 2.

Exigenter not to receive Pluries *before ſigned by clerk of the warrants.*

No exigenter ſhall receive any *Pluries capias* in order to made an exigent or proclamation thereon, before the ſame be ſigned or ſtamped by the clerk of the warrants, or his deputy, to the end it may appear, that the warrant of attorney therein is duly filed. *Hil.* 2, 3 *Jac.* 2.

Trinity *term in the ſeventh year of the reign of king* George *the third.*

The warrant of attorney.

London. *T. J.* putteth in this place *L. R.* his attorney againſt *C. W.* late of *New Bond-ſtreet* in the county of *Middleſex*,

Jex, upholster, in a plea of trespass on the case.

This warrant of attorney being filed, for which you pay 4*d.* the clerk of the warrants stamps the *Pluries*, which you thereupon carry to the exigenter of the county, who will make out an exigent and proclamation, which you are to get sealed, and carry to the sheriff of the county in which you have laid the action, and the proclamation to the sheriff of that county wherein the defendant dwells at the time of awarding the exigent.

Exigenter, on receipt of the Pluries *stampt, to make out the exigent and proclamation.*

If there happen not to be five county days between the teste and return of the exigent, you must apply to the exigenter for an *Allocatur* to bring in the five county days; and the like must be in *London* for want of *Hustings.*

Where an Allocatur *necessary.*

You may make out your process in order, and endeavour to take the defendant on any of them; and it is the safer way so to do.

Where any exigent shall be awarded, a writ of proclamation shall be made out of the same teste and return as the writ of exigent directed to the sheriff of the county where the defendant at that time of the exigent awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action; and the sheriff to whom the proclamation shall be directed shall make 3 proclamations, *viz.* one in open county court, one other at the general quarter-sessions of the peace in those parts, where the defendant at the time of the exigent awarded shall be dwelling; and one other one month

When an exigent is awarded, a proclamation to be made out of the same teste and return.

Sheriff to make three proclamations.

month at leaſt before the *Quint. exact'* by virtue of the writ of exigent, at or near the moſt uſual door of the church or chapel of that town or pariſh where the defendant ſhall be dwelling at the time of the exigent ſo awarded; and if the defendant ſhall be dwelling out of any pariſh, then in ſuch place as aforeſaid of the pariſh next adjoining to the defendant's dwelling, and upon a *Sunday* immediately after divine ſervice. All outlawries pronounced, and no proclamation awarded and returned, according to this ſtatute, are void.—*Stat.* 31 *Eliz. c.* 3. §. 1.

His fee.

The ſheriff, for making the proclamation at or near the church door, ſhall have 12*d.* *Same ſtat.* §. 1.

Officer who makes out the exigent to make out the proclamation. His fee.

The officer in whoſe office the exigent ſhall be taken ſhall make out the proclamation, and ſhall take no more for making ſuch writ of proclamation, and entering it on record, but only 6*d.* *Stat.* 6 *Hen.* 8. *c.* 4. §. 3, 4.

Attornies to be careful that writs of proclamation be delivered.

According to the proviſion of the ſtatute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the ſheriffs to take care duly to execute the ſame. *Mich.* 1654.

Proclamation to be filed with the Cuſtos brevium.

After the exigent and proclamation is returned, you file the proclamation with the *Cuſtos brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon make out a *Capias utlagatum* either general or ſpecial, the one againſt the defendant's body, the other againſt his body, goods and lands,

Capias utlagatum either general or ſpecial.

lands, into as many counties as you shall think proper either in *England* or *Wales*.

If the defendant appears by *Supersedeas quia improvide*, or doth truly render himself [illegible] the exigent, no bail is requirable. [illegible] int. 1654.

If defendant appears on the exigent, no bail is requir-ed.

No sheriff, under-sheriff, their deputies or bailiffs, shall set at liberty any person arrested upon any *Capias utlagatum*, until he receive a *Supersedeas* according to law from the officer thereunto appointed. *Mich.* 1654. *Stat.* 13 *Car.* 2. *c.* 2. §. 4.

Sheriff not to discharge defendant arrested on Capias utlagatum *without a* Supersedeas.

No sheriff, under sheriff, *&c.* shall set at liberty any person taken upon any writ of *Capias utlagatum*, nor discharge the lands or goods of any person outlawed, without a lawful *Supersedeas* under the seal of the court. *Hil.* 15, 16 *Car.* 2.

Upon affidavit made and filed, that any sheriff, officer, or bailiff, has enlarged any person arrested upon *Capias utlagatum* before judgment, without a lawful *Supersedeas* in that behalf, the person so offending shall pay 40s. to the party grieved, who shall have an attachment of course against such sheriff, officer, bailiff, or party offending, for payment of the same; and the party offending shall likewise undergo such other punishment as by the court shall be thought fit. *Trin.* 2 *Jac.* 2.

Penalty of 40s *&c.*

Before the reversing of any outlawry, or any *Supersedeas* made thereunto, the defendant shall give special bail, if the sum or damages expressed in the original, whereupon the exigent was awarded, shall amount to the sum

Before Supersedeas *defendant to give bail, if the cause of action be* 10l. *or upwards.*

ſum of 10*l.* or upwards. *Hil.* 15, 16 *Car.* 2. *Trin.* 2 *Jac.* 2.

Defendant to give bail to ſatisfy the condemnation.

Before any allowance of any writ of error, or reverſing of any outlawry be had, [illegible] plea or otherwiſe, through or by w[illegible]t [illegible] proclamation to be had or ma[illegible]e ac[illegible] to this ſtatute, the defendant in the [illegible] action ſhall put in bail, not only to ap[illegible] the and anſwer the plaintiff in the forme[illegible] in a new action, to be commenced fo[illegible] cauſe in the firſt action, but alſo to ſatisfy the condemnation if the plaintiff ſhall begin his ſuit before the end of * *two terms* next after the allowing the writ of error, or otherwiſe avoiding the ſaid outlawry. *Stat.* 31 *Eliz. c.* 3. *ſ.* 3. *Mich.* 12 *Geo.* 1. the rule ſays of * *the term* next after, *&c.*

Outlawry after the death of the plaintiff not to be reverſed without bail to the executor.

No outlawry after the death of the plaintiff in the action ſhall be reverſed, without the defendant's appearing and putting in ſpecial bail (if the action requires it) to the executor or adminiſtrator of the plaintiff or to the huſband and wife, where the wife while a *Feme* ſole ſued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverſe the outlawry, deliver the name of the executor or adminiſtrator of ſuch deceaſed plaintiff to the proper prothonotary. *Trin.* 2 *Jac.* 2.

Judgment of outlawry appearing to be entered after plaintiff's death, and *Cap. utl.*

to be issued without revival of judgment; *Cap. utl.* was set aside. *Barnes* 325.

[illegible]ry commenced and completed during defendant's residence in *Ireland*, was ordered to be reversed at his expence, without [illegible] or appearance. *Barnes* 325. But court [illegible] not exercise their discretionary power to reverse outlawries on motion in a summary way for a visible defect, but in a favorable case for defendant; and therefore where he appeared to be an absconding person, and the motion, though in his name, not made by him, but by a third person, and the matter appearing to be a contention between creditors, the court would not interfere, but put party to bring his writ of error. *Barnes* 325, 326.

No defendant, who shall be outlawed and shall appear and reverse such outlawry, shall upon the reversal pay to the plaintiff any sum of money exceeding the usual costs of the *Exigent*, together with the fine paid to the king upon the original, and all further costs shall be respited to the time of signing judgment for the plaintiff. *Trin.* 33 *Car.* 2.

On reversing an outlawry defendant only to pay costs to the exigent, and the fine.

Further costs respited quousque.

Upon every writ of *Exigent*, if a *Supersedeas* be not put in thereto, at or before the day of appearance thereof, no *Supersedeas* shall by any sheriff be allowed to any such writ, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and just costs of suit therein; and upon the reversal of any outlawry the defendant shall, before the reversal or any *Supersedeas*

No Supersedeas *to the exigent, unless put in before the day of appearance, to be allowed till costs paid.*

On reversal defendant shall pay costs to the exigent.

perfedeas, pay to the plaintiff or his attorney, or leave in the court for him the full costs of suit to the *Exigent*. And where the sheriff shall have taken an inquisition, and extended the goods, chattels, &c. and returned the same into the *Exchequer*, &c. further costs shall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as the plaintiff hath been at in prosecuting the said inquisition, before any certificate of the reversal shall be made by the clerk of the outlawries. *Trin. 2 Jac. 2.*

Where inquisition taken, &c. further costs to be taxed.

On making out a *Superfedeas* the defendant need not enter an appearance with the Exigenter; the *Superfedeas* itself is an appearance. *Dyer* 233.

On reversing an outlawry, if plt. proceed not in two terms deft. to have costs taxed.

Every defendant who shall be outlawed, and cause the said outlawry to be reversed, if the plaintiff thereupon shall not proceed within two terms next after notice of reversing thereof, shall have costs to be taxed by the prothonotary. *Trin. 33 Car. 2.*

Of outlawing after judgment

A man may be outlawed after judgment, and that without any writ of *Alias*, *Pluries*, or proclamation. In this case you take out a writ of *Capias ad satisfaciendum*, which must have 15 days between teste and return; and if the defendant cannot be taken thereon, you get the sheriff to return *Non est inventus* on the writ, and then carry it to the Exigenter, who will make out a writ of *Exigent* against the defendant, upon the return of which you may have a *Capias utlagatum*, either general or special, and into as many counties as you please, either in *England*

[illegible]*land* or *Wales*; and if the defendant's body be taken, or his goods extended thereon, he can obtain no discharge for either till he has made satisfaction.

[illegible] if a writ of error be brought on the judgment, the plaintiff cannot proceed to [illegible] the defendant pending the writ of error; for though the plaintiff may bring an [illegible] of debt on the judgment pending a [illegible] of error, and proceed to judgment thereon, it has always been confined to restraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad satisfaciendum* is a proceeding to execution, and therefore not justifiable.

No outlawry after judgment, pending a writ of error.

It much behoves practisers to be cautious when they outlaw, for if the defendant appears * publickly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverse it at his own charge, if not otherwise punish him.

Before defendant is returned outlawed, he may supersede the Exigent, though founded on a special original, but cannot after, without bail, who are bound to pay the money at all events, not being at liberty to render the principal in their discharge. *Barnes* 326.

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* A visible person outlawed, he being a desperate man, riding armed, and telling the plaintiff that he absconded. *Pract. Reg. C. P.* 272. See *Barnes* 325.

A person visible outlawed, he living within the verge of the court, and plaintiff not being able to obtain leave to arrest him. *Pract. Reg. C. P.* 274.

Of procuring the money levied on the defendant's goods.

Where the defendant's goods are taken on the special *Capias utlagatum*, the sheriff, if the plaintiff requires it, will extend and appraise the goods by inquisition, and for that purpose the plaintiff must first have them inventoried and appraised by proper persons, to give evidence of their value to the jury; if they are not worth above 40*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middlesex* the sheriff takes for the inquisition as follows:

	l. s. d.	*l. s. d.*
For taking the inquisition, schedule of the goods seized, and return ——	——	0 18 6
To the bailiff for summoning the jury —	0 4 0	
For the use of the room where the inquisition is taken ——	0 1 0	
To every juryman 1*s.* —	0 12 0	
	——	0 17 0
		——
		1 15 6

It may be proper to give the defendant notice of taking the inquisition, as is done of executing a writ of inquiry.

If there be occasion, a *Subpœna* for witnesses may be made out in the following form.

GEORGE, &c. To *A. B. &c.* greeting. We command you, and every of you, that

that all excuses being laid aside, you be in your proper persons before the sheriff of our county of *Middlesex* on —— the —— day of ——— at ——— of the clock in the fore-noon, at the court-house at *Westminster* (or at the *Three Tons* in *Brook-street* near *Holborn*) in the county of *Middlesex*, to testify and declare the truth according to your knowledge, upon a certain inquisition to be taken by the said sheriff, on the oath of good and lawful men of his county, pursuant to our precept to inquire what lands and tenements, goods and chattels *W. S.* late of, *&c.* was possessed of on the —— day of ——— in the year of our Lord ——, on which day he was outlawed at the suit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100*l.* for the default of each of you. Witness, *&c.*

When the *Capias utlagatum* is returned with the inquisition annexed, it must be carried to the clerk of the outlawries, who will transcribe, and transmit it into the *Exchequer*; then a clerk in the king's remembrancer's office must be employed, who will sue out a writ of *Venditioni exponas*, by virtue of which the sheriff will sell the goods. If the money raised exceeds not 20*l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20*l.* a petition to the following effect must be presented to the lords of the treasury.

To the right honourable the lords commissioners of his majesty's treasury.

The humble petition of R. R.

Sheweth,

Petition to the lords of the treasury.

THAT *W. S.* late of, *&c.* being indebted to your petitioner in the sum of 50*l.* your petitioner did in *November* last, at his very great charge, prosecute the said *W. S.* to an outlawry; and by virtue of a special *Capias utlagatum* directed to the sheriff of *Middlesex*, several goods of the said *W. S.* were seized, and found by inquisition to be of the value of 45*l.* which goods were afterwards sold by the said sheriff, by virtue of a writ of *Venditioni exponas*, at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

That your petitioner's said debt, and the charge he has already been at in prosecuting the said outlawry, greatly exceed the sum so remaining in the said sheriff's hands.

Wherefore your petitioner humbly prays your lordships, that the money so levied as aforesaid may be paid over to your petitioner.

And your petitioner shall ever pray, &c.

This

This petition the lords of the treaſury will refer to their ſolicitor, now *Thomas Nuttall*, eſq; The plaintiff muſt make an affidavit before one of the barons of the *Exchequer*, [illegible] the allegations in the petition, [illegible] of his debt and the charge he has [illegible]. This affidavit, with the attorney's [illegible], *Venditioni exponas* and return, muſt be [illegible] before the ſolicitor of the treaſury, who being ſatisfied of the truth of the petition will make a report to their lordſhips accordingly, and then a warrant will iſſue to his majeſty's attorney general, to conſent that ſo much of the money levied as ſhall remain in the hands of the ſheriff, after deducting the uſual poundage, be paid to the plaintiff, towards ſatisfaction of his debt and coſts, on his moving the court of *exchequer* for an order for that purpoſe; this warrant muſt be delivered to the attorney general, who on the plaintiff's making ſuch motion by counſel, will conſent accordingly, and then on producing the order under ſeal, the ſheriff will pay the money to the plaintiff.

The expence out of pocket of this application.

	l.	*s.*	*d.*
Duty and oath of the affidavit	0	2	6
To the ſolicitor of the treaſury	1	1	0
To his clerk ——	0	5	0
At the treaſury, for the reference, *&c.* warrant and poundage, when the ſum does not exceed 50*l.* you pay about —	3	3	0

To

	l.	s.	d.
To the attorney general ——	2	2	0
To his clerk —— ——	0	2	6
Fee to the counsel to move —	0	10	6
To the clerk in the *Exchequer* according to the length of the proceedings, about ——	5		

Of writs of error.

WHERE a party apprehends himself grieved by the judgment of this court, he may remove the same by a writ of error into the *King's Bench*. This writ is made out by the cursitor for the county wherein the action is laid; and is in this form:

A writ of error.

GEORGE the second, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To his trusty and well-beloved Sir knt. chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment, in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between *William Norman* and *Samuel Burrough*, gent one of the attornies of our court of the bench, of a certain trespass upon the case done to the said *William* by the said *Samuel* as it is said, manifest error hath intervened, to the great damage of the said *Samuel*, as by his complaint we are informed, we, willing that the said error, if any be, be duly amended,

ded, and full and speedy justice done to the said parties in this behalf, do command you, that if judgment be given thereupon, then you send to us distinctly and plainly under [illegible] the record and process of the said [illegible], with all things touching the same, and [illegible]; so that we may have them on the octave of St. *Hilary*, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may cause farther to be done thereupon for amending the said error, as of right, and according to the law and custom of *England*, shall be meet to be done. Witness *Caroline*, queen of *Great Britain*, &c. guardian of the same realm, &c. at *Westminster*, the 26th day of *November* in the [illegible]th year of our reign. *Burgh.*

Of allowing [illegible]

You pay for this writ 13*s.* *viz.* [illegible] 6*d* the cursitor's fee and seal, and [illegible] king's [illegible]. You carry this to the clerk of the errors to be allowed, for which you pay 2*l.* 2*s* 6*d* whereupon he gives you a note directed to the attorney of the adverse party, signifying his allowance of the writ, which notice you must deliver accordingly.

Writ of error no Supersedeas on any single bond for debt, bond conditioned for payment of money only, debt for rent, or on any contract.

Unless bail put in.

No execution shall be stayed upon any writ of error, or *Supersedeas* thereupon to be sued for the reversing of any judgment given in any action, or bill of debt, upon any *single bond for debt*, or upon any *obligation*, with *condition for the payment of money only*, or upon any action or bill of *debt for rent*, or upon any *contract*, unless such person in whose name such writ of error shall be brought, with two sufficient sureties, such as the court

(wherein

(wherein such judgment is given) shall allow of, shall first before such stay made, or *Supersedeas* awarded, be bound unto the party for whom such judgment is given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said former judgment, to prosecute the said writ of error with effect; and also to pay (if the said judgment be affirmed) the debt, damages and costs adjudged upon the former judgment; and all costs and damages to be awarded for the same delaying of execution. *Stat.* 3 *Jac.* 1. *c.* 8.

To prosecute with effect. *Pay the debt, &c.* *And costs for delay of execution.*

Writ of error no Supersedeas *after verdict. On action on Stat.* 2 Ed. 6. *Promise for payment of money, trover, covenant, detinue and trespass. Unless bail as aforesaid.*

And no execution shall be stayed by any writ of error, or *Supersedeas* thereupon, after any verdict and judgment thereupon obtained in any action of *debt*, on statute 2 *Edw.* 6. for *not setting forth of tithes*, nor in any action upon the *case*, *upon* any *promise for payment of money*, action *sur trover*, action of *covenant*, *detinue* and *trespass*, unless such recognizance, and in such manner, as by the said act 3 *Jac.* 1. is directed, shall be acknowledged in the said court where such judgment is given. The second *stat.* 13 *Car.* 2. *c.* 2. *s.* 8, 9.

On writ of error after verdict, double costs if judgment affirmed.

And if any person shall sue or prosecute any writ of error for reversal of any judgment whatsoever given *after any verdict*, and the said judgment shall be affirmed, then such person shall pay unto the defendant in the said writ of error his double costs, to be assessed by the court where the writ of error shall be depending, for the delaying of execution. *Same statute*, *s.* 10.

And

And no execution ſhall be ſtayed by writ of error, or *Superſedeas* thereupon, after verdict and judgment thereupon, in any action perſonal whatſoever, unleſs a recognizance with condition, according to the ſtatute 3 *Jac.* 1. ſhall be firſt acknowledged in the court where the judgment ſhall be given. In writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution ſhall be ſtayed, unleſs the plaintiff in ſuch writ of error ſhall be bound unto the defendant in ſuch writ of dower, or action of *ejectione firmæ*, in ſuch reaſonable ſum as the court to which ſuch writ of error ſhall be directed, ſhall think fit, with condition that if the judgment ſhall be affirmed, or that the ſaid writ of error be diſcontinued in default of the plaintiff therein, or that the ſaid plaintiff be nonſuit in ſuch writ of error, that then the plaintiff ſhall pay ſuch coſts, damages, and ſum and ſums of money, as ſhall be awarded upon ſuch judgment affirmed, diſcontinuance, or nonſuit had. *Stat.* 16, 17 *Car.* 2. *c.* 8. *ſ.* 3.

Writ of error no Superſedeas *after verdict in any action perſonal, unleſs bail as aforeſaid.*

Nor after verdict in dower or ejectment.

Unleſs plt. in error be bound, &c.

On affirmance, diſcontinuance or nonſuit, to pay coſts.

The court, wherein ſuch execution ought to be granted upon ſuch affirmance, diſcontinuance or nonſuit, ſhall iſſue a writ to inquire, as well of the meſne profits, as of the damages by any waſte committed after the firſt judgment in dower or *ejectione firmæ*; and upon the return thereof, judgment ſhall be given and execution awarded for ſuch meſne profits and damages, and alſo for coſts of ſuit. *Same ſtat. ſ.* 4.

On affirmance, &c *writ to inquire of the meſne profits,* &c.

This

This act not to extend to executors, &c.

Penal statutes, &c.

Nor indictments, &c.

This act not to extend to any writ of error to be brought by any executor or administrator, nor to any action popular, nor to any action upon any penal law or statute (except action of debt for not setting forth of tithes) nor to any indictment, presentment, inquisition, information or appeal. *Same stat. s.* 5.

In what penalty recognizance shall be taken on a writ of error after verdict in ejectment, or dower.

To ascertain the practice of this court, and settle for the future what shall be deemed a reasonable sum for the penalty of the recognizance, to be entered into where a writ of error is brought upon any judgment after verdict in ejectment or dower; it is ordered, that the recognizance to be entered into on every such occasion, pursuant to the statute 16 & 17 *Car.* 2. shall be taken in a penal sum, to the amount of two years value of the premisses comprised in the verdict; and double costs recovered, subject to the condition mentioned in the said act. *Trin.* 24 & 25 *Geo.* 2.

No bail in error on bond for performance of covenants, tho' condition did not appear on record.

Judgment in debt on a bond conditioned for the performance of covenants, but notwithstanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks* and *Bird*, *Mich.* 10 *Geo.* 2. *Barnes* 72.

Bail in error on judgment upon bond for payment of money mentioned in a mortgage.

Judgment in debt on bond conditioned for payment of 300 *l.* mentioned in a surrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Woods* and *Armstrong*, *Mich.* 12 *Geo.* 2. *Barnes* 78.

Scire

Scire facias on a recognizance of bail in error, award of execution thereon against the bail, who bring a writ of error upon that award of execution. No bail is required on this writ of error, for that would be bail *ad infinitum*.

No bail required on writ of error brought by bail in error.

No attorney shall make out any execution *Non obstante brevi de errore* until he has had a certificate from the clerk of the errors, that the record is not removed, and a *Non pros* thereupon duly signed. *Trin.* 28 *Car.* 2.

No execution Non obstante errore, *without certificate of* Non pros *signed.*

All writs of error shall be forthwith delivered to the clerk of the errors for the time being; and no one shall be obliged to forbear suing out execution by pretence of any writ of error, before the writ of error shall be delivered to the clerk of the errors. *Same rule*, and *Mich.* 28 *Car.* 2.

Writ of error to be delivered to the clerk of the errors. And till then no stay of execution.

Held, that a writ of error is not a *Supersedeas* from the time of the sealing, but from the delivery to the clerk of the errors. *Mich.* 15 *Geo.* 2. *C. B. Meriton* v. *Stevens. Barnes* 205. *Hil.* 18 *Geo.* 2. *C. B. Sykes* v. *Dawson. Barnes* 209.

And in cases where special bail is required, unless the plaintiff on such writ of error shall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of *Supersedeas* thereon, the defendant may proceed to execution notwithstanding such writ of error. *Mich.* 28 *Car.* 2.

Where bail required, bail to be put in within four days.

Aliter *execution.*

In all cases where bail shall be filed on writs of error, such bail shall likewise be perfected within four days after exception taken thereto; or in default thereof the clerk of the errors

Bail to be perfected in 4 days after exception.

errors ſhall *Non pros* ſuch writ of error. *Mich.* 6 *Geo.* 2.

No execution for not tranſcribing without certificate.

After a writ of error ſhall be duly allowed, and a *Superſedeas* thereupon obtained, no execution ſhall be made for not tranſcribing the record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in ſuch writ of error made default in tranſcribing the record into the *King's Bench*, according to a rule of court to be firſt given of courſe. *Mich.* 28 *Car.* 2.

Of perfecting bail on rule for better bail in vacation.

If a rule for better bail in error is ſerved in vacation, the plaintiff in error has not of courſe, till the next term to perfect his bail, but ought to juſtify before a judge; and if the defendant in error be not ſatisfied with that, then the plaintiff in error, having done every thing in his power, has until the next term to perfect his bail.

Time refuſed to perfect bail in error, becauſe no real error ſuggeſted. 2 *Wilſ.* 144.

Execution after error, tho' before notice, void.

An execution ſued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not puniſhable for a contempt, though reſtitution ought to be made. *Smith* v. *Cave*, 3 *Lev.* 312.

Debt on judgment after error.

After a writ of error brought on a judgment in this court, an action of debt may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, *viz.* of the judgment in this court, of the removal by writ of error, and that the judgment is ſtill in full force, *prout*

patet

patet per record' inde in banco regis. Gale v. *Till*, 3 *Lev*. 396. *V. antea fol.*

If an action of debt be brought on a judgment pending a writ of error in the original action, the plaintiff may proceed to judgment, but not to take out execution till the writ of error be determined. *Coe* and *Allam*, *Pract. Reg. C. P.* 55. *Trin.* 9 *Geo.* 1. *Jackſon* and *Ducket*, *Pract. Reg. C. P.* 54. *Rep. & Caſ. of Pract. C. P.* 32. *Hil.* 13 *Geo.* 1. But the plaintiff may take out execution notwithſtanding the writ of error, if the defendant does not apply to the court to ſtay execution. *Humphreys* and *Daniel*, *Barnes* 202. *Rep. and Caſ. of Pract. C. P.* 129. *Pract. Reg. C. P.* 183. *Paſ.* 9 *Geo.* 2. The plaintiff, pending a writ of error, cannot have an *Exigent poſt ca. ſa.* on the original judgment. *Spinks* and *Bird*. *Paſ.* 10 *Geo.* 2. *Barnes* 314. *Pract. Reg. C. P.* 184.

Debt on judgment pending error, plt. may proceed to judgment, but can't have execution if deft. applies.

If a writ of error be brought on a judgment, and the plaintiff brings an action of debt on the recognizance againſt the bail in the original action, pending the writ of error, the court will ſtay the proceedings till the writ of error is determined; for if the plaintiff might proceed to judgment againſt the bail, they would be thereby deprived of an opportunity of ſurrendering the defendant. *Newman* and *Butterworth*, *Hil.* 8 *Geo.* 2. *Barnes* 66. *Rep. and Caſ. of Pract. C. P.* 112 *Pract. Reg. C. P.* 82.

Debt on recognizance againſt bail, pending error, proceedings ſtayed.

If a writ of error be brought on a judgment in this court, and the chief juſtice dies [before he has returned the writ of error] whereby

If writ of error abates by death of chief juſtice, execu-

tion with leave of the court. whereby the writ is abated, execution may be taken out with leave of the court; but if taken out without leave, it will be set aside, and restitution ordered. *Cranborne* and *Quenel*, *Thornton* and *Hays*, *Pract. Reg. C. P.* 195. *Barnes* 201. *Hil.* 9 *Geo.* 2.

Of transcribing. At the return of the writ of error a rule must be given with the clerk of the errors, by the defendant in error, for the plaintiff to transcribe the writ of error into the *King's Bench*, which rule will be out in eight days after service thereof on the plaintiff in error, or his attorney; and if the record be not transcribed in eight days, the clerk of the errors will sign a *Non pros.* The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

What time the clerk of the errors takes to transcribe. If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe in, and carries in the record on the first day of the next term.

Though writ of error be *non-prossed*, for want of transcribing record, yet the bail, being bound to prosecute writ of error with effect, will be liable. *Barnes* 499.

After the transcript is carried in, the whole proceedings are in the *King's Bench*. See the *Attorney's Practice in the Court of King's Bench.*

Leave to file warrant of attorney after The plaintiff had obtained judgment in *Trin.* 1726. Error was brought in *Trin.* 1727

1727, and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney; whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Chesshyre pro Quer.* and *Whitaker* and *Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson* and *Quilter*, *Mich.* 1 *Geo.* 2.

error brought denied. Pract. Reg. C. P. 197.

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assigned for error, and a *Certiorari* returned, that there was no warrant of attorney· The plaintiff moved to amend the warrant of attorney, by making it *de placito debiti super Sci. fa.* and upon hearing *Branthwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad indos occidentales negotians* v. *Henriques & al'*, *Pract. Reg. C. P.* 25. *Pas.* 1 *Geo.* 2. 2 *Brownl.* 167. 2 *Coke* 135.

Warrant of attorney amended after error brought.

After error brought the record was ordered to be amended, by inserting at the top of the roll *from the day of St. Martin* in *fifteen days, in the ninth year*, &c. The cause of action having arose in *Michaelmas* term. *Deacon* and *Vivian*, *Pas.* 9 *Geo.* 2. *Barnes* 7.

Record amended after error brought.

Judgment roll amended after error brought, and *In nullo est erratum* pleaded, by striking out the words *ought to*, and inserting the word *do*, the judgment being, that the plaintiff *ought to recover*, instead of *do recover*: This

The like on payment of costs, if plaintiff in error did not proceed.

 amend-

amendment was ordered without costs, if the plaintiff in error should proceed; *aliter* costs were to be paid. *Foster* and *Blackwell*, *Pas.* 10 *Geo.* 2. *Barnes* 7, 8.

No discontinuance after error without costs.

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refused to let the plaintiff discontinue without paying the costs on the writ of error. *Pym* and *Warren*, *Mich.* 6 *Geo.* 2. *Barnes* 169.

Said that a *Scire facias* on a recognizance of bail upon a writ of error need not set forth the condition of the recognizance. *Hil.* 17 *Geo.* 2. *C. B.* *Malland* v. *Jenkins*. *Barnes* 93.

COSTS

COSTS on ERROR brought in the EXCHEQUER CHAMBER.

Hilary Term, 1778.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching if writ of error allowed, and when returnable	0	0	0	0	1	8	0	3	4
Rule to tranſcribe	0	2	4	0	2	4	0	2	4
Copy and ſervice	0	0	0	0	1	0	0	2	0
Inquiring if plaintiff had tranſcribed, and forwarding ſame	0	0	0	0	1	8	0	3	4
Paid taking tranſcript out of office	0	2	6	0	2	6	0	2	6
Attending at Weſtminſter to examine tranſcript	0	0	0	0	3	4	0	6	8
Paid for keys of Treaſury, and to examine ſame	0	7	6	0	7	6	0	7	6
Paid clerk of errors in Exchq chamber for copy of error and record	1	16	0	1	16	0	1	16	0
Fair copy at 2*d.* a folio for agent, and 8*d.* for attorney	0	0	0	0	8	8	0	17	4
Examining ſame with record	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	3	4	0	6	8
Letters and meſſengers	0	0	0	0	1	0	0	2	0

Easter Term following.

	Out of Pocket			Agent			Attorney		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
Rule to alledge diminution *	0	2	4	0	2	4	0	2	4
Copy and ſervice	0	0	0	0	1	0	0	2	0
Term fee	0	0	0	0	3	4	0	6	8
Letters and meſſengers	0	0	0	0	1	0	0	2	0

Michaelmas Term following.

	l.	s.	d.	l.	s.	d.	l.	s.	d.
Attending ſeveral times to ſee if errors aſſigned	0	0	0	0	1	8	0	3	4
Copy aſſignment of errors	0	0	0	0	1	0	0	2	0
Plea in *nullo eſt erratum*	0	0	0	0	1	6	0	3	0
Copy to file, duty, and paid	0	2	6	0	3	6	0	4	6
Paid ſetting down cauſe for affirmance	0	9	6	0	9	6	0	9	6
Copy paper book, fo. 60	0	0	0	0	10	0	1	0	0
Attending to examine ſame	0	0	0	0	3	4	0	6	8
Attending court on affirmance	0	0	0	0	3	4	0	6	8
Notice of taxing coſts	0	0	0	0	1	0	0	2	0
Bill of coſts, and copy	0	0	0	0	1	0	0	2	0
Attending taxation, and to examine *remittitur*	0	0	0	0	3	4	0	6	8

* Reſt of money paid for this rule is included in the charge for copy of writ and record.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid for allowance	3	18	6	3	18	6	3	18	6
Entry thereof and *remittitur*	0	0	0	0	2	8	0	5	4
Entry on roll	0	0	0	0	1	4	0	2	8
Entring and examining ſame at Treaſury	0	0	0	0	3	4	0	6	8
Paid clerk there	0	3	6	0	3	6	0	3	6
Term fee	0	0	0	0	3	4	0	6	8
Letters and meſſengers	0	0	0	0	1	0	0	2	0

If Writ of ERROR ſhould happen to be *non-proſſed* for Diſobedience to any of the Rules, the Items of Diſburſements and Fees will be nearly as follow.

Trinity Term, 1778.

No Diminution being alledged, or no Errors being aſſigned, as Caſe may be.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending court, and motion for *Non pros*	0	0	0	0	3	4	0	6	8
Paid	4	0	0	4	0	0	4	0	0
Bill of coſts and copy	0	0	0	0	1	3	0	2	6
Attending taxation, and to examine *remittitur*	0	0	0	0	3	4	0	6	8
Entry, and engroſſing ſame on roll, attending, *&c.*	0	0	0	0	4	6	0	9	0
Paid clerk of Treaſury	0	3	0	0	3	0	0	3	0
Term fee, letters, *&c.*	0	0	0	0	4	4	0	8	8

Replevin.

THIS suit may be by original out of Chancery returnable in this court, but is most usually commenced in the county court, and removed into this court by writ of *Recordari facias loquelam* commonly called a *Resalo*, taking its name from the first syllable of each word in the name of the writ, *viz.* Recordari facias loquelam; but if the suit be first commenced in an inferior court of record, as in *London*, then it must be removed into this court by writ of *Certiorari*, for the *Resalo* doth not go to a court of record, because there the suit is already recorded. In order for a *Resalo* you make out a *Præcipe* to the cursitor of the proper county in the following form, *viz.*

Essex, *to wit.* *REFALO* for (either plaintiff or defendant, naming them) of a plaint between *Richard Knightsbridge* against *John White* and *William Sell*, for taking and unjustly detaining the cattle, goods and chattels of the said *Richard*.

Returnable from Easter *day in* 15 *days.*

This *Præcipe* you deliver to the cursitor who will make out the writ, and then you carry it to the under-sheriff who will return it.

The suit may be removed either by the plaintiff or defendant.

If

Of proceeding if Refalo brought by plaintiff.

If the plaintiff in replevin brings the *Recordari facias loquelam*, he files it, when returned, with the filacer of the county, and gives a rule for the defendant to appear, and in default thereof may have a *Pone*, *Diſtringas*, *&c.*

If by defendant.

If the defendant brings the *Recordari facias loquelam*, he alſo files it, when returned, with the filacer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration may have a writ of return *Habend.*

Where notice of filing Refalo, *and calling for a declaration neceſſary.*

If the defendant doth not file the *Recordari facias loquelam* at the day of the return, or at leaſt on the appearance day of the return, he muſt give the plaintiff's attorney notice of filing it; it is ſaid there is no occaſion to call for a declaration; however, it is but fair practice and the ſafer method, to call upon the plaintiff's attorney for the declaration.

When Procedendo *ſhall go.*

If the defendant brings the *Refalo* and doth not get it returned, and file it within two terms, the plaintiff may have a certificate thereof from the filacer, and thereupon the curſitor will make him out a writ of *Procedendo*, upon which he may proceed in the court below.

See the ſecond volume for declarations, *&c.* in replevin.

The particular place of taking the goods ought to be mentioned in every declaration in replevin.—And the plea of *Cepit in alio loco* is a plea in bar, and not in abatement, and

and doth not require an affidavit, nor to be pleaded in four days after delivering the declaration.

Motion was made to set aside judgment, signed by defendant in replevin, for want of a plea in bar: case was, that defendant had pleaded an avowry, to which plaintiff put in a plea in bar; afterwards defendant obtained order on summons to amend avowry, on payment of costs; both which being done, defendant gave new rule for plaintiff to plead in bar *de novo*; and then demanded plea in bar afresh; plaintiff paid no regard thereto; whereupon defendant signed judgment, which plaintiff prayed might be set aside; question put by court was, how the practice stood in this case? which was answered by Mr. prothonotary *Dickins*, to be, that after rule to plead in bar *de novo*, and demand made, and no such plea by plaintiff, old plea in bar stood as before, whereto defendant ought to have replied, instead of signing judgment; which was therefore set aside. *Grose* for plaintiff; *Walker* for defendant. *Hil.* term, 17 *Geo.* III. *C. B. A. D.* 1777. MS. notes.

A writ of second deliverance is in the nature of a *Supersedeas* to the return *Habend.* if brought before the return *Habend.* be executed.

Double costs not allowed on a nonsuit in *replevin*, where plaintiff declared for taking and detaining an ox, and defendant avowed the taking as a seizure for an heriot custom, claiming no right to distrain; *aliter* had it been

been for heriot ſervice, for that cattle are diſtrainable. *Barnes* 148.

Nonſuit in replevin; avowant executed a writ of inquiry, after a writ of ſecond deliverance, and good. *Wilſ. Rep. C. B.* 116. *Barnes* 426.

Recordari facias loquelam.

	s.	d.
Duty	2	0
Curſitor	2	6
	4	6

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Eſſex*, greeting. We command you, that in your full county you cauſe the plaint to be recorded, which is the ſame county, without our writ, between *Richard Knightsbridge*, and *John White*, and *William Sell*, of the cattle, goods and chattels of the ſaid *Richard*, taken and unjuſtly detained as it is ſaid, and that you have the ſaid record before our juſtices at *Weſtminſter*, from *Eaſter* day in fifteen days under your ſeal, and the ſeals of four lawful knights of the ſame county, of ſuch as ſhall be preſent at the ſaid record, and that you prefix the ſame day to the parties, that then they may be there ready to proceed in the ſaid plaint as ſhall be juſt; and have you there the names of the ſaid four knights, and this writ. Witneſs ourſelf at *Weſtminſter* the ſixth day of *March* in the ſeventh year of our reign. Let execution be done of this writ, if the ſaid *Richard* deſire it, otherwiſe not.

Browne.

By

The return. By virtue of this writ to me directed in my full county court, held for the county of *Essex* or *Chelmsford* in the county aforesaid, the one and thirtieth day of *March* in the year within mentioned, I caused the plaint between the parties within named to be recorded, and have that record ready before the justices of our lord the king at *Westminster* at the day within mentioned, under my seal, and the seals of *Richard Cox*, *Charles Tabor*, *Henry Burdock*, and *Samuel Barwick*, four lawful knights of the same county, who were present at the recording the said plaint; and I have prefixed the same day to the said parties, that they be then before the said justices of our sovereign lord the king at *Westminster*, to proceed therein according to justice as by the same writ I am commanded.

The rest of the execution of this writ appears in a certain schedule to the said writ annexed.

The answer of
James Hannol, esq; sheriff.

Essex, *to wit.* AT my county court held at *Chelmsford* in the county aforesaid, the fifth day of *February* in the year of our Lord 1739, (among other things) it is thus recorded.

Richard Knightsbridge complains of *John White*, and *William Sell*, of a plea of taking and unjustly detaining of his cattle, goods and chattels, *&c.*

Pledges

Pleges to profecute, { *John Mansfield* of *Hofier Lane*, *London*, watch-fpring maker. *John Befuth* of *Stratford Langthorne* in the county of *Effex*, gardener. }

Thomas Bowes, efq; fheriff.

Pone in replevin.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the fheriff of *Effex*, greeting. Put by fureties and fafe pledges, *John White* and *William Sell*, that they be before our juftices at *Weftminfter*, from the day of the holy *Trinity* in three weeks, to anfwer to *Richard Knightfbridge* of a plea wherefore they took the cattle, goods and chattels of the faid *Richard*, and them unjuftly detained againft gages and pledges, as he faith, and to fhew, wherefore they have not appeared in our court before our juftices at *Weftminfter*, from *Eafter* day in fifteen days laft paft, as the day prefixed to them; and have you there the names of the pledges and this writ. Witnefs Sir *William De Grey*, knt. at *Weftminfter*, the 29th day of *May* in the 7th year of our reign. *Boycott.*

6 *June* 1777. *R.* by *R.*

COSTS

COSTS for PLAINTIFF in RE-PLEVIN.

Hilary Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to ſue	0	0	0	0	2	2	0	4	4
Attending execution of the replevin bond	0	0	0	0	1	8		3	4
Paid ſheriff for ſame	1	1	0	1	1	0		1	0

Eaſter Term following.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid entring plaint	0	3	8		3	8	0	3	8
Attending county court	0	0	0		1	8	0	3	4
Searching for *Recordari*	0	0	0		1	8	0	3	4
Declaration fo. 3	0	0	0		1	6	0	3	0
Engroſſing duty, warrant, &c.	0	0	3	0	1			1	11
Entry on Roll	0	0	0	0	0			1	0
Rule to avow	0	1	10	0	2			2	6
Searching for and drawing avowry	0	0	0	0	2	8	0	5	4
Copy avowry fo. 10	0	0	0	0	1	8	0	3	4
Paid adviſing with council thereon, and on plea in bar	0	10		0	10		0	10	6
Attending him	0	0		0	1		0	3	4

Search-

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Summons to amend declaration	0	2	0	0	2	0	0	2	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Attending thereon	0	0	0	0	1	8	0	3	4
Order, copy and ſervice	0	2	0	0	3	0	0	4	0
Appointment to tax coſts, copy, and ſervice	0	2	0	0	3	0	0	4	0
Taxing ſame	0	0	0	0	1	8	0	3	4
Paid coſts of amendment	0	18	0	0	18	0	0	18	0
Attending to amend declaration and to pay coſts taxed	0	0	0	0	1	8	0	3	4
Term, fee, letters, &c.	0	0	0	0	3	6	0	7	0

Trinity Term, 1778.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
New rule to avow	0	1	10	0	2	2	0	2	6
Searching for and demanding avowry	0	0	0	0	2	8	0	5	4
Copy avowry, fo. 10	0	0	0	0	1	8	0	3	4
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Plea in bar, fo. 6	0	0	0	0	3	0	0	6	0
Fee to council for ſigning ſame	0	10	6	0	10	6	0	10	6

Attending

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending him for that purpoſe	0	0	0	0	1	8	0	3	4
Engroſſing and duty	0	0	3	0	1	3	0	2	3
Paid for entry	0	4	0	0	4	0	0	4	0
Paid for rule to reply	0	1	10	0	2	2	0	2	6
Searching for and demanding replication	0	0	0	0	2	8	0	5	4
Copy replication	0	0	0	0	0	6	0	1	0
Searching for rule to rejoin	0	0	0	0	1	8	0	3	4
Demurrer to replication, fo. 3	0	0	0	0	1	6	0	3	0
Fee to council for ſigning	0	10	6	0	10	6	0	10	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Engroſſing and duty	0	0	3	0	0	9	0	1	3
Paid entring demurrer	0	2	0	0	2	0	0	2	0
Rule to rejoin in demurrer	0	1	10	0	2	2	0	2	6
Searching for and demanding joinder	0	0	0	0	1	8	0	3	4
Term fee, letters, &c.	0	0	0	0	3	6	0	7	0

COSTS for DEFENDANT in Replevin, on stat. 11 Geo. II. chap. 19. sect. 21. which orders double costs to be paid by PLAINTIFF, on his being non-suited, &c.

	Out of Packet			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending in *Bell Lane, Paddington*, and making a distress on the goods of *James Agate* the tenant, notice thereof with inventory	0	0	0	0	10	6	1	1	c
Two fair copies of inventory, to serve and keep	0	0	0	0	3	4	0	6	8
Searching at sheriff's office whether replevin brought, when found there was	0	0	0	0	1	8	0	3	4
Paid man for four days possession and board 3*s.* 6*d.* a day*	0	14	0	0	14	0	0	14	0

In sheriff's court.

* If man does not find himself in board, he is intitled to only 2*s.* 6*d.* a day.

Trinity Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Entring appearance	0	2	0	0	3	8	0	5	4
Searching for bail	0	0	0	0	1	8	0	3	4
Letters, &c.	0	0	0	0	0	6	0	1	0
In this court									

Michaelmas Term, following.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Precipe for *Re. Fa. Lo.* to remove plaintiff and copy	0	0	0	0	0	6	0	1	0
Paid curſitor for ſame	0	4	6	0	4	6	0	4	6
Fee thereon	0	0	0	0	1	8	0	3	4
Attending ſheriff therewith, and for return	0	0	0	0	1	8	0	3	4
Paid ſheriff for return, and for ſummoning defendant	0	14	6	0	14	6	0	14	6
Returning and filing *Re. Fa. Lo.* with filacer	0	2	0	0	2	6	0	3	6
Entring appearance	0	2	4	0	4	0	0	5	10
Rule to declare	0	1	10	0	2	2	0	2	6
Letters, &c.	0	0	0	0	0	6	0	1	0

Hilary

Hilary Term, 1779.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching for and demanding declaration	0	0	0	0	2	8	0	5	4
Judgment of *Non-pros.*	0	0	0	0	1	6	0	3	0
Paid for ſtamp	0	5	1	0	5	1	0	5	1
Entry on roll	0	0	0	0	0	6	0	1	0
Paid prothonotary ſigning judgment	[illegible]	6	0	0	6	0	0	6	0
Writ of *retorn. habend.*	0	3	2	0	5	10	0	8	6
Attending ſheriff therewith, and for return	0	0	0	0	1	8	0	3	4
Paid for return, "*elongata*"	0	3	4	0	3	4	0	3	4
Paid filing ſame	0	1	0	0	1	0	0	1	0
Term fee (*Non-pros* ſigned)	0	0	0	0	3	4	0	6	8
Letters, &c.	0	0	0	0	1	0	0	2	0

Proceedings on Replevin Bond.

Eaſter Term, 1778.

Inſtructions and warrant to proceed on recognizance of bail	0	0	0	0	2	2	0	4	4
Attending ſheriff for licence to proceed,									

 and

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
and figning his indemnity	0	0	0	0	1	8	0	3	4
Paid for fame	0	6	8	0	[illegible]	8	0	6	8
Copy replevin bond, folio 8.	0	0	0	0	0	8	0	1	4
Capias	0	4	2	0	7	7	0	11	0
Many journies in order to ferve fame	0	0	0	0	2	6	0	5	0
Cap. by contin.	0	3	5	0	6	7	0	9	8
Endeavoring to ferve fame	0	0	0	0	2	6	0	5	0

Fines.

Fines.

FINES are used as common assurances for the conveyance of lands, and are of several sorts; *viz.*

1. *Sur cognizance de droit, come ceo que il ad de son done.*
2. *Sur done, grant et render.*
3. *Sur cognizance de droit tantum.*
4. *Sur concessit.*
5. *Sur release.*

These are for several purposes, but the first is the most usual, and of that only we shall treat here, the rest being but seldom made use of.

Fines are taken either with or without a *Dedimus potestatem.*

Methods of taking a fine.

Without a Dedimus.

1. In court, or
2. By the chief justice out of court.

By Dedimus.

1. By any of the judges, or by a serjeant at law (and in this case a *Dedimus* may be taken out after the caption, but before the judge or serjeant will return the caption;) or

2. By commissioners named in the *Dedimus*, and therefore in this case the *Dedimus* must be taken out before the caption.

Of passing a fine in court.

In this case you get the writ of covenant before the caption, and for that purpose you make out a *Præcipe* to the cursitor in the following form, according to the nature of the case.

Præcipe *for writ of covenant.*

Middlesex, *to wit*, Command *A. B.* gentleman and *E.* his wife, that justly, *&c.* they perform to *C. D.* the covenant made between them, of one messuage and one garden, with appurtenances in *B.* and unless, *&c.* *Returnable*, &c.

After you have got the writ of covenant, for which you pay 7 *s.* 6 *d.* you ingross the *Præcipe* and concord in parchment in the following form.

Præcipe *and concord.*

Middlesex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that justly, *&c.* they perform to *C. D.* the covenant made between them, of one messuage and one garden, with the appurtenances in *B.* and unless, *&c.*

And the agreement is such, *to wit*, that the aforesaid *A.* and *E.* have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said *C.* as those which the said *C.* hath of the gift of the aforesaid *A.* and *E.* and these they have remised and quit-claimed from them the

the said *A.* and *E.* and the heirs of the said *A.* to the aforesaid *C.* and his heirs for ever: And moreover the said *A.* and *E.* have granted for them and the heirs of the said *A.* that they will warrant to the aforesaid *C.* and his heirs, the aforesaid tenements, with the appurtenances, against them the said *A.* and *E.* and the heirs of the said *A.* for ever: And for this, *&c.*

You then go with the conusors to *Westminster*, and give the writ, *Praecipe* and concord, to a serjeant's clerk, and he will get it passed for you; the wife must be examined by one of the judges, as to her free consent, without coercion of her husband.

Before the chief justice, a judge, or serjeant.

If the fine be to be acknowledged before the chief justice, a judge, or serjeant at law, you ingross the *Praecipe* and concord on parchment, as before, and make another copy of them on paper, and write under each of them on the left hand side thus:

> Taken and acknowledged the day of in the eighth year of the reign of our sovereign lord *George* the third, now king of *Great Britain*, &c. Before me.

The concord ingrossed on parchment, and the paper copy thereof, must be signed by the cognizors; you then go with the cognizors before the chief justice, judge, or serjeant, who will take the caption, examining the wife as before; the paper copy is kept by

the clerk of the chief juſtice, judge, or ſerjeant; you pay for the caption 12 *s.* 6 *d.*

If the fine be taken by a judge (not being the chief juſtice,) or by a ſerjeant, you ſue out a *Dedimus poteſtatem*, and for that purpoſe you make out a *Præcipe* for the curſitor as followeth:

Middleſex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that juſtly, *&c.* they perform to *C. D.* the covenant made between them of one meſſuage, and one garden, with the appurtenances, in *B.* And unleſs, *&c.*

De. po. To [*naming the judge or ſerjeant*:] You pay for this *Dedimus* 10 *s.* 8 *d.* And deliver it to the judge, or ſerjeant's clerk, who will get it returned for you.

If the fine be to be taken by ſpecial commiſſioners, you make a *Præcipe* for the curſitor in the following form, according to the nature of your caſe.

Eſſex, *to wit*, Command *C. K.* and *L.* his wife, that juſtly, *&c.* they perform to *D. B.* gentleman, the covenant, *&c.* of twenty acres of land with the appurtenances in *C.* And unleſs, *&c.*

De. Po. directed to { *J. B.* knight.
R. R.
C. M.
S. W.
J. W.

You

You pay for this *Dedimus* 1 *l.* 5 *s.* 8 *d.*

Then you ingrofs the *Præcipe* and concord in parchment, in this form:

Effex, *to wit*, Command *C. K.* and *L.* his wife, that juftly, *&c.* they perform to *D. B.* the covenant made between them of twenty acres of land, with the appurtenances in *C.* And unlefs, *&c.*

And the agreement is fuch, that is to fay, that the aforefaid *C.* and *L.* have acknowledged the aforefaid tenements, with the appurtenances, to be the right of him the faid *D.* as thofe which the faid *D.* hath of the gift of the aforefaid *C.* and *L.* and thofe they have remifed and quit-claimed from them the faid *C.* and *L.* and the heirs of the faid *C.* to the aforefaid *D.* and his heirs, for ever. And moreover the faid *C.* and *L.* have granted for them and the heirs of the faid *C.* that they will warrant to the aforefaid *D.* and his heirs, the aforefaid tenements, with the appurtenances, againft them the faid *C.* and *L.* and the heirs of the faid *C.* for ever. And for this, *&c.*

Taken and acknowledged the day of in the eighth year of the reign of our fovereign lord *George* the third, now king of *Great Britain*, &c. Before

Any two of the commiffioners may take the fine, examining the wife feparate and apart from the hufband, as to her free confent,

ſent, without coercion from her huſband, to paſs the fine, and part with her intereſt in the lands, telling her the conſequence of her acknowledging the fine; the *Præcipe* and concord ſhould be read to the cognizors, and then ſigned by them, and the commiſſioners ſign the caption and then annex the *Præcipe* and concord to the *Dedimus*, and the commiſſioners ſubſcribe their names to the return, which is to be indorſed on the back of the *Dedimus* in the following words, *viz.*

The execution of this writ appears in a certain ſchedule hereunto annexed.

Vide poſtea the *rule*; as the affidavit neceſſary of the due taking of a fine by *Dedimus*, and a judge's *Allocatur* thereon.

As to paſſing the fine through the offices; you carry the writ of covenant to the *Alienation-Office* in the *King's Bench Walks* in the *Temple*, to compound for the fine, for which the commiſſioners have fixed rules, according to the parcels in the writ; if a commiſſioner be preſent, you compound for the fine immediately, and pay the fine and the fees, the latter generally about 2*s.* The clerk keeps the writ generally two days to enter it in the office-books; having got the writ from the *Alienation-Office*, you ingroſs a warrant of attorney on parchment in the following form, according as your caſe requires.

Michael-

Michaelmas *term in the seventh year of king* George *the third.*

Essex, *to wit.* D. *B.* putteth in his place *A. B.* his attorney, to prosecute a writ of covenant against *C. K.* and *L.* his wife of lands in *C.*

This warrant you file with the clerk of the warrants in *Clifford's Inn,* for which you pay 4*d.* and 4*d.* for every *Post terminum*; for the warrant of attorney must be of that term in which the writ of covenant was returnable.

By *stat.* 32 *Geo.* 2. *c.* 14. *sect.* 1. On every writ of covenant which shall be sued out for the passing of fines in the Common Pleas at *Westminster*, the officer whose duty it is to set and indorse the pre-fine payable thereon, shall at the same time set the usual post-fine, and indorse the same on the back of the said writ, together with his name or mark of office, in like manner as the same are now indorsed at the king's silver office, which post-fine shall be forthwith paid to the receiver of pre-fines at the alienation office, with 4*d.* as his fee for receiving the same, instead of the fee of 4*d.* charged on lands and hereditaments, and payable to sheriffs, bailiffs, and others, on discharging the same, by 3 *Geo.* 1. *cap.* 15. which fee of 4*d.* by the said act granted, after the first day of *Trinity* term 1759, shall cease; and such receiver shall indorse, upon the back of every such

writ

writ of covenant, one mark of office, as is now used by him on the receipt of pre-fines at the alienation office, with the name of such receiver, and the sum received as the post-fine, which mark of such receiver shall discharge the manors, lands and hereditaments comprised in the said writ of covenant, and the cognizees named therein.

By *sect.* 2. The officer or clerk of the king's silver office, or his deputy, shall continue to enter every fine upon record in the way hitherto used, and make the same entries, and put thereon the same indorsements with the same mark, and in like manner as has hitherto been the practice of the said office in passing of fines; and no fine, until the same be marked with the sum to which the post fine amounts in the king's silver office, shall be effectual in law.

By *sect.* 3. Where no pre fine is payable on any writ of covenant, (*viz. where the lands are under the yearly value of five marks*) the officer at the alienation office, whose duty it is to set the pre-fines, shall set on every writ of covenant brought to the said alienation office, on which no pre-fine is payable, a post-fine of 6*s.* 8*d.* and shall indorse such post-fine of 6 *s.* 8 *d.* on every such writ of covenant with his name and mark of office, as it hath been usual; and every such post-fine of 6*s.* 8*d.* shall be paid to the receiver of the alienation office, before the writ of covenant on which no pre-fine is payable, be passed at the alienation office; and the receiver, on payment of the said 6*s.* 8*d.* shall

indorse

indorse and mark every such writ of covenant, as other writs of covenant are by this act directed to be indorsed.

By *sect.* 4. The officer or clerk of the king's silver office, or his deputy, after the first day of *Trinity* term 1759, shall not receive any writ of covenant, unless it appear by the mark and indorsement of such receiver, that the post-fine has been paid.

By *sect.* 5. If after the payment of such post-fine, the writ of covenant by the death of any of the parties, or other cause, be prevented from passing through the several other offices, so as the said fine is not completed; then the said receiver shall repay to the cognizees, or their attorney, on producing and filing with him the said writ of covenant, every such sum as has been before by him received for the post-fine; and such writ of covenant so remaining filed with such receiver shall be a discharge to such receiver.

By *sect.* 11. This act shall not alter the operation of any fine, which after the first day of *Trinity* term 1759 shall be levied in the Common Pleas at *Westminster*, or the course of passing fines in that court, otherwise than by this act directed.

You then carry the writ of covenant to the office of the *Custos Brevium*, in *Brick Court* in the *Temple*, to be entered, and three days after you fetch it away, carry then with you the concord and *Dedimus* (if any) to have the proclamations indorsed; you pay

pay here 3 *s.* 8 *d.* and 1 *s.* 8 *d.* for every *Post terminum*, if any.

Then annex to the writ of covenant the concord and *Dedimus* (if any), and leave them at the king's silver office in *Old Crown-Office Row* in the *Temple*; you pay here 1 *s.* 8 *d.* for the caption, and 4 *d.* for every other caption, if more than one, and fetch the writ, &c. from this office the third day after you left it.

Then you carry the writ, concord, &c. to the chirographer's office, to make the indentures; which you have in about a week's time.

WHEREAS by a rule of this court, made in the thirteenth year of the reign of his late majesty king *George*, it was ordered, that no fine whatsoever taken and acknowledged before any commissioners, by virtue of a writ of *Dedimus potestatem* to them directed, be allowed to pass, unless some person present when such fine was taken and acknowledged did personally appear before the lord chief justice, or some other justice of this court, and was examined upon oath touching the due execution thereof, and particularly whether such person knew the parties acknowledging such fine; which rule has been found by experience to be attended with inconveniencies, and has not answered all the good purposes for which it was intended; for remedy thereof, and the better to ascertain the practice for the future,

What affidavit necessary of the due execution of a fine.

It is ordered, that, instead of an oath made *viva voce* of the due acknowledgment of such

ſuch fines, an affidavit or affidavits in writing on parchment ſhall be made and annexed to every fine ſo taken as aforeſaid, in which affidavit or affidavits the perſon or perſons making the ſame ſhall ſwear, that he or they knew the party or parties acknowledging ſuch fine; that the ſame was duly ſigned and acknowledged; that the party or parties acknowledging, and alſo the commiſſioners taking the ſame, were all of full age and competent underſtanding; that the femes covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſame, and that the conuſor or conuſors, and every of them, knew the ſame to be a fine to paſs his, her, or their eſtate or eſtates; which fine, together with ſuch affidavit or affidavits annexed, ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court for his *Allocatur* thereon, and ſuch affidavit or affidavits ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office. And it is ordered, that all and every ſuch affidavit and affidavits as aforeſaid, except where the perſon or perſons at the time of their acknowledging the fine are in *Ireland*, or ſome other parts beyond the ſeas, ſhall be made by ſome attorney or attornies of the courts at *Weſtminſter Hall*, or of the great ſeſſions in *Wales*, or of the county palatine of *Cheſter*, *Lancaſter* and *Durham*, and ſhall be ſworn before a perſon duly authoriſed to take affidavits in this court. *Hil.* 17 *Geo.* 2.

The

The form of an affidavit of the due caption of a fine.

In the Common Pleas.

A. *B.* of —— in the county of —— one of the attornies of his majesty's court of —— and one of the commissioners named in the writ of *Dedimus potestatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows *C. D.* and *E.* his wife, and *F. G* and *H.* his wife, the conusors named in the said fine, and that the same was duly signed and acknowledged by them before this deponent and *J. K.* gentleman, the other commissioner named in the said writ; and that the said *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and also this deponent and the said *J. K.* were at the time of taking and acknowledging the said fine all of full age and competent understanding. That the said *E.* and *H.* we solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the said fine, and that the said conusors, and every of them, knew the same to be a fine to pass his, her, or their estate and estates.

A. B.

Sworn at —— in the county of —— the —— day of —— in the year of our Lord —— before me

L. M. one of, (&c.)

Or

Or thus, if the affidavit is not made by a commissioner.

In the Common Pleas.

A. B. of —— in the county of —— one of the attornies of the court of —— maketh oath and saith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conusors named in the fine hereunto annexed, and that the said fine was duly signed and acknowledged by them in this deponent's presence, and that they the said *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and also *J. K.* and *L. M.* gentlemen, the commissioners taking the same fine, were at the time of taking thereof all of full age, *&c.* as in the former.

If there be only one conusor and his wife, say —— and each of them ——.

A rule made *Trin.* 26 *&* 27 *Geo.* 2. reciting the last rule of *Hil.* 17 *Geo.* 2. and that the same had been found by experience to have answered many, but not all the good purposes for which it was intended: To make therefore the same more effectual and complete, and the better to ascertain the practice for the future;

Further rule thereon.

It is ordered that in the affidavit, or affidavits, made in pursuance of such rule, the person or persons, so making the same, shall not only swear as they are directed by the said rule, but also that the fine was duly

ſigned and acknowledged, upon the day and year, or days and years, mentioned in the caption; and if there be any razure or interlineation in the body or caption of ſuch fine, that ſuch razure or interlineation was made before the party or parties ſigned the ſaid fine, and before the caption was ſigned by the commiſſioners: Which affidavit, or affidavits, ſhall be annexed to the fine, and ſhall be tranſmitted to the ſaid lord chief juſtice, or ſome other juſtice of this court, for his *Allocatur* thereon, and ſhall remain annexed to ſuch fine, and be left with the ſame in the proper office, as is directed by the ſaid rule.

An addition to be made to the former affidavit.

AND this deponent further ſaith, that the ſaid fine was duly ſigned and acknowledged, upon the day and year mentioned in the caption, (or upon the ſeveral days and year, or years, reſpectively mentioned in the captions, if there happens to be more captions than one;) and that the razure or interlineation (razures, or interlineations) in the body (or in the caption, or captions) of ſuch fine *(as the caſe ſhall happen)* was (or were) made before the party (or parties) ſigned the ſaid fine, and before the caption (or captions) was (or were) ſigned by the commiſſioners.

A fine

A fine was taken before *Prentice* an attorney, and *Prentice* a tradesman as commissioners; *Prentice* the attorney died without having made an affidavit of the acknowledgment of the fine. One of the cognizors became bankrupt, absconded, and did not surrender within the time limited by the statute. Ordered that the fine should pass on affidavit of the due acknowledgment thereof by *Prentice* the tradesman. *Trin.* 27, 28 *Geo.* 2. *Barnes* 217. *Say* against *Smith* and others.

Fine passed on affidavit by a tradesman.

Writ of covenant tested first day of *Easter* term, *viz.* 1 *May* 1754.

Death of one of the cognizors before king's silver entered, but no Caveat till after.

Fine taken by *De. po.* 13 *May.*

Writ of covenant returnable 19 *May.*

Compounded and pre-fine paid between 17 & 20 *May.*

Mary Nunn one of the cognizors died 27 *May.*

After passing the return, warrant of attorney and *Custos brevium* offices, the writ was brought to the king's silver office on 11 *June*, and the clerk there then entered the king's silver or post-fine in his book, and on the writ of covenant.

A *Caveat* to prevent the completing this fine was brought to the king's silver office on 13 *June* (before the record was made up in form).

The court utterly exploded the notion, which had prevailed, undoubtedly by mistake, that the king's silver is the pre-fine or fine for licence to alienate; certainly it is not; the king's silver is the post-fine or fine

for licence to accord. 2 *Inst.* 411. *Dyer* 246. The return of the writ of covenant is agreed to be in the life-time of *Mary* the cognisor; and from that time the crown has a right to the post-fine, which was entered at the king's silver office before any *Caveat* against it; the making up the record in form is certainly a ministerial act, not necessary to be done previous to the *Caveat*; the entry by the clerk of the king's silver as aforesaid is sufficient. (2 *Ro. Ab.* 19. *Q. p.* 1. *in point.*) *Pas.* 28 *Geo.* 2. *Barber* plaintiff against *Henry Nunn* and *Mary* his wife and others deforcients. *Barnes* 218.

Fine taken beyond sea not signed by the parties, ordered to pass.

A fine taken at *Naples* ordered to pass, though not signed by the parties, on affidavit that it was duly acknowledged; that the parties were of full age and good understanding; that the feme covert was examined apart from her husband and freely consented. The fine being taken beyond sea is not within the late rule requiring an affidavit, and the signing a fine by the cognisors is not an essential part. By *Willes*, ch. justice, and *Clive* just. 27 *February* 1756. *Fleetwood* plaintiff, *Calender* and wife and others deforcients. *Barnes* 219, 220.

A fine amended in the name of a parish, which was levied in the reign of queen *Anne*. 3 *Wils. Rep.* 58.

Fine amended by deed of uses, adding a *vill*. *Barnes* 24.

Proceedings to perfect a fine stayed, and former proceedings vacated, wife of one of the cognizors, dying before return of writ of

of covenant, on motion, without putting parties to bring writ of error; the concord is to be made at return of writ of covenant, if party die before that day, there can be no agreement, all is void. *Barnes* 220, 221.

A fine from three conusors and the wives of two of them, to two conusees, upon two writs of covenant. 1. *Of messuages, cottages, barns, stables, gardens, orchards, land, meadow, pasture, wood, common of pasture, and free fishery.* 2. *Of messuages, cottages, barns, stables, gardens, orchards, land, meadow, pasture, wood, furze and heath.*

Norfolk, *to wit*, COmmand *A. B.* gent. and *C.* his wife, *D. E.* gent. and *F.* his wife, and *G. H.* gent. that they justly, *&c.* perform to *J. K.* esq; and *L. M.* gent. the covenant made between them of four messuages, six cottages, four barns, six stables, six gardens, six orchards, four hundred acres of land, four hundred acres of meadow, four hundred acres of pasture, forty acres of wood, common of pasture for all cattle, and free fishery with the appurtenances in *N. O.* and *P.* And unless, *&c.*

Suffolk, *to wit*, *Command* the same that they justly, *&c.* perform to the same the covenant made between them of six messuages, four cottages, five barns, six stables, six gardens, six orchards, four hundred acres of land, two hundred acres of meadow, two

 hundred

hundred acres of paſture, thirty acres of wood, and forty acres of furze and heath, with the appurtenances in *Q. R. &c.* and unleſs, *&c.*

And the agreement is ſuch, *to wit*, that the aforeſaid *A.* and *C. D.* and *F.* and *G.* have acknowledged the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances to be the right of the ſaid *J.* as thoſe which the ſaid *J.* and *L.* have of the gift of the ſaid *A.* and *C. D.* and *F.* and *G.* and thoſe they have remiſed and quit-claimed from themſelves the ſaid *A.* and *C. D.* and *F.* and *G.* and their heirs, to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* for ever. *And moreover*, the ſaid *A.* and *C.* have granted for themſelves and the heirs of the ſaid *C.* that they will warrant to the ſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances, againſt them the ſaid *A.* and *C.* and the heirs of the ſaid *C.* for ever. *And further* the ſaid *D.* and *F.* have granted for themſelves and the heirs of the ſaid *F.* that they will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appurtenances againſt them the ſaid *D.* and *F.* and the heirs of the ſaid *F.* for ever. *And alſo* the ſaid *G.* hath granted for himſelf and his heirs, that he will warrant to the aforeſaid *J.* and *L.* and the heirs of the ſaid *J.* the aforeſaid tenements, common of paſture and fiſhery, with the appur-

appurtenances againſt him the ſaid *G.* and his heirs for ever, and for this, *&c.*

Taken and acknowledged, *&c.*
A. B.
C. B.
D. E.
F. E.
G. H.

ILL of Disbursements and Fees on Fine passed by De. Po.

Trinity Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s*	*d.*	*l.*	*s.*	*d.*
Perusing writings, attending for that purpose, and to settle parcels for fine	0	0	0	0	3	4	0	6	8
Precipe for *De. Po.* and copy for cursitor	0	0	0	0	1	6	0	3	0
De. Po. and fee	1	6	8	1	10	0	1	13	4
Precipe and concord with fair copy, fo. 4	0	0	0	0	2	8	0	5	4
Engrossing and parchment	0	0	5	0	1	9	0	3	1
Affidavit of caption, parchment duty, engrossing, and oath	0	3	9	0	5	3	0	6	9
Allowance	0	4	0	0	4	0	0	4	0
Attending judge for same	0	0	0		1	8	0	3	4
Writ of covenant and fee	0	7	6	0	10	10	0	14	2
Private seal	0	8	6	0	8	6	0	8	6
King's fine	4	13	4	4	13	4	4	13	4
Attending to compound	0	0	0	0	3	4	0	6	8
Alienation fees	0	4	0				0	4	0
Pre-fine and post-fine	7	0	0						
Letters, &c.	0	0	0					2	0

Michaelmas Term following.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Returning and inrolling covenant	0	1	6	0	1	9	0	2	0
Warrant of attorney, and filing	0	0	4	0	0	10			
Keeper of writs	0	3	8	0	3	8	0	3	8
King's filer and	0	2	8	0	2	8	0	2	8
Chirographer	0	6	2	0	6	2	0	6	2
Indentures	0	6	6	0	6	6	0	6	6
Paſſing fine	0	0	0	0	6	8	0	13	4
Letters, &c.	0	0	0	0	1	0	0	2	0

Bill of Diſburſements and Fees on Fine paſſed at Bar, conſiſts of the ſame Items as the laſt, except as hereunder expreſt.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Precipé for covenant, and copy for curſitor									
Serjeants for counting fine at bar	0	2	0	0	2	8		3	4
Attending court	0	0			3			6	8
Paid ſecondary and cryer	0	2			2			2	6
Paid king's fine	1	0			0			0	0

N. B. The reſt of this bill ſame as laſt.

Reco-

Recoveries.

Where the parties appear in proper person.

OF ſuffering a recovery where the tenant and vouchees appear in perſon.

You prepare a *Præcipe* on paper, according to the nature of your caſe, in this manner:

Cooke.

Eaſter *term in the ſeventh year of the reign of king* George *the third.*

Eſſex, *to wit.* COmmand *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſſuages, and twenty-four acres of land (*ſpecifying the parcels*) with the appurtenances in *D.* which he claimeth, *&c*

Tenant in perſon voucheth to warrant *S. F.* who in perſon voucheth to warrant *Edmund Wilſon.*

If there be more vouchees, name them in order, naming *Edmund Wilſon*, who is the common vouchee, laſt.

Then you go with the tenant and vouchee or vouchees (except the common vouchee) to *Weſtminſter*, and give the *Præcipe* to a ſerjeant's clerk, who will get it paſſed at bar, and deliver it back to you.

If

If the recovery be with ſingle voucher, you pay the ſerjeant's clerk 6*s.* with double voucher 8*s.* with treble voucher 10*s.* with quadruple voucher 12*s.* and if by warrant of attorney 4*s.* more. There are other fees in court amounting to about 5*s.* more, if by warrant of attorney, to 6*s.* but you may give thoſe fees to the ſerjeant's clerk who will pay them for you.

You then make a copy of the *Præcipe* for the curſitor to make out the writ of entry in the following form.

Eſſex, *to wit*, Command *R. R.* gentleman, that he juſtly, *&c.* render to *S. R.* three meſſuages and twenty-four acres of land, with the appurtenances in *D.* which he claimeth, *&c.*

Returnable from Eaſter *day in* 15 *days.*

You pay for the writ of entry 7*s.* 6*d.* and then get the attorney general's hand to it, for which you pay 10*s.* (this is frequently done laſt of all); you then go to the alienation office in the *Temple*, and compound for the fine, which for ſuch ſmall parcels as above is generally 6*s.* 8*d.* which you pay with the clerk's fee, generally about 2*s.* or 2*s.* 6*d.*

You then make out a writ of ſeiſin, for the form of which *vide poſtea*, and having got it ſigned by the prothonotary and ſealed, you carry that and the writ of entry to the return office, N°. 3 in the Inner *Temple*, to be

be returned; for the return of each you pay 1 *s.* 6 *d.*

You then prepare a draught of your recovery in the form after mentioned, and getting a roll from the prothonotary's office enter it thereon in an ingrossing hand.

Then the exemplification is to be ingrossed in an exemplifying hand in the form hereafter mentioned, on a skin of parchment, with a double five shillings stamp. Then go to the prothonotary's office, taking with you the roll, exemplification, writs, and *Præcipe* passed at bar, docket the roll, enter the *Præcipe* on the remembrance roll, according to the form you'll see there, and one of the prothonotary's clerks will examine the writs, entries and exemplification; you pay him the fees, which are different according to the nature of the case; he then signs the exemplification, which you then get sealed.

The form of the recovery as entered on the roll.

Entry returnable from Easter *day in* 15 *days.*

Essex, *to wit,* S. *R.* gentleman, in his proper person demandeth against *R. R.* gentleman, three messuages and twenty-four acres of land with the appurtenances in *D.* as his right and inheritance, and into which the same *R.* hath not entry but after the disseisin which *Hugh Hunt* thereof unjustly, and without judgment hath made to the said *S.* within thirty years, &c. And whereupon he

he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the aforeſaid *R.* in his proper perſon cometh and defendeth his right, when, *&c.* and therein, and voucheth to warrant *S. F.* who is preſent here in court in her proper perſon, and freely warranteth the tenements aforeſaid, with the appurtenances, to the ſaid *R*, *&c.* and hereupon the ſaid *S.* demandeth againſt the ſaid *S.* tenant by her own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that he was ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *S.* tenant by her own warranty defendeth her right, when, *&c.* and thereupon ſhe further voucheth to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to her the tenements aforeſaid with the appurtenances, *&c.* and hereupon the ſaid *S.* demandeth againſt him the ſaid *Edmund* tenant by his own warranty the tenements aforeſaid, with the appurtenances in manner aforeſaid, *&c.* and whereupon he ſaith, that he

he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said *Edmund*, tenant by his own warranty defendeth his right, when, &c. and saith, that the said *Hug*[illegible] not disseise the said *S.* of the tenements aforesaid with the appurtenances, as the said *S.* by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.

And the said *S.* thereupon craveth leave to imparle, and he hath it, &c. and afterwards the said *S.* cometh again here into court in this same term in his proper person, and the said *Edmund* although solemnly called cometh not again, but departed in contempt of the court, and maketh default; therefore it is considered, that the said *S.* recover his seisin against the said *R.* of the tenements aforesaid with the appurtenances, and that the said *R.* have of the land of the said *S.* to the value, &c. and furthermore that the said *S.* have the land of the said *Edmund* to the value, &c. and the said *Edmund* in mercy, &c. and hereupon the said *S.* prayeth a writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause full seisin of the tenements aforesaid with the appurtenances to be delivered to him, and is granted to him returnable here on the morrow

row

row of the Aſcenſion of our Lord; at which day the ſaid *S.* cometh here into court in his proper perſon, and the ſheriff namely *E. E.* eſq; now returneth, that he by virtue of the aforeſaid writ to him directed on the twenty-ſecond day of *May* in this ſame term did cauſe full ſeiſin of the tenements aforeſaid with the appurtenances, to be delivered to the aforeſaid *S.* as by the ſaid writ he was commanded, and *&c.*

Exemplification of the above recovery.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To all to whom theſe our preſent letters ſhall come, greeting. Know ye that amongſt the pleas of land inrolled at *Weſtminſter*, before Sir *John Eardley Wilmot*, knight, and his brethren our juſtices of the bench of the term of *Eaſter* in the ſeventh year of our reign, upon the ſeventh roll it is thus contained: Entry returnable [*the whole of the above entry to the words*] Commanded, *&c.* All and ſingular which premiſſes at the requeſt of the ſaid *S.* by the tenor of theſe preſents we have commanded to be exemplified; in teſtimony whereof, we have cauſed our ſeal appointed for ſealing of writs in the bench aforeſaid to be affixed to theſe preſents. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the twenty-firſt day of *May* in the ſeventh year of our reign.

Cooke.

To

Of recoveries where some of the parties appear by attorney.

To prevent the expence and delay of a *Dedimus* for the tenant, when he lives at distance from *Westminster*, generally some person in *London* is made tenant to the *Præcipe*; therefore there being seldom a *Dedimus* for the tenant, and this being intended as a short treatise of the most usual matters in recoveries, and not of all its branches, I shall proceed to recoveries where the vouchee appears by attorney.

Prepare a *Præcipe* for the cursitor to make out the *Dedimus potestatem*, according to the nature of your case, in the following form:

Shropshire, *to wit*, Command *A. B.* gentleman, that he justly, *&c.* render to *R. R.* gentleman, twenty messuages, ten gardens, two hundred acres of land, one hundred acres of meadow, one hundred acres of pasture, fifty acres of wood, fifty acres of furze and heath, common of pasture for all manner of cattle, fairs, markets, tolls, stallage and pickage, with the appurtenances in *B. L. B. C.* and *L.* which he claimeth, *&c.*

The tenant in person voucheth to warrant *R. W.* esq; and *W. W.* gent. (whereupon summons returnable from the day of St. *Martin* in fifteen days) who by attorney voucheth to warrant *Edmund Wilson.*

Sir *J. B.* knt.
De. po. to ——— *G. M.* } gent.
T. M. }

You pay the cursitor for this writ 1 5 8

The

The warrant of attorney is to be ingroſſed on parchment thus:

Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, hath vouched to warrant, put in their place *J. S.* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, &c.

Taken and acknowledged the day of in the ſeventh year of the reign of king *George* the third, before.

The vouchees are to ſign and acknowledge the warrant of attorney, in the preſence of any two of the commiſſioners who are to ſign the caption, and alſo an indorſement on the back of the *Dedimus* in theſe words, *viz.*

The execution of this commiſſion appeareth in a certain ſchedule to this commiſſion annexed.

Hilary Term, *in the fourteenth year of the reign of king* George *the third.*

In the common pleas.

FOR the more effectual and certain proof of the due acknowledgment of warrants of attorney, taken from the tenants or vouchees in common recoveries, by virtue of any writ of *Dedimus Poteſtatem*, It is ordered by the court, That from and after

the firſt day of *Michaelmas* term next, no common recovery, wherein the tenant or tenants, vouchee or vouchees, or any of them, ſhall appear and defend by attorney, ſhall be arraigned at the bar, unleſs an affidavit or affidavits in writing on parchment ſhall be made and annexed to a copy of the precipe and warrant or warrants of attorney, acknowledged by ſuch tenant or tenants, vouchee or vouchees, by virtue of any writ or writs of *Dedimus Poteſtatem*; in which affidavit or affidavits the perſon or perſons making the ſame ſhall ſwear, That he or they knew the party or parties acknowledging ſuch warrant or warrants of attorney; that the ſame was or were duly ſigned and acknowledged, upon the day and year or ſeveral days and years mentioned in the caption or ſeveral captions thereof; that the party or parties acknowledging, and alſo the commiſſioners taking the ſame, were all of full age and competent underſtanding; that the femes covert (if any) were ſolely and ſeparately examined apart from their huſbands, and freely and voluntarily conſented to and acknowledged the ſame; that all the ſaid parties knew the ſame warrant or warrants of attorney was or were intended for ſuffering a common recovery to paſs his, her, or their eſtate or eſtates. And further, that the razure or razures, interlineation or interlineations, (if any) in the body or caption of ſuch original warrant or warrants of attorney was or were made before the ſaid parties or any of them ſigned the ſaid warrant or warrants,

and

and before the commiſſioners ſigned the ſaid caption or captions, which affidavit or affidavits (together with the ſaid copy of the precipe and warrant or warrants of attorney, whereunto the ſame ſhall be annexed) ſhall be filed in the office of inrolment of writs for fines and recoveries. And it is ordered, That all and every ſuch affidavit or affidavits, as aforeſaid, ſhall be made by ſome attorney or attornies, of the courts of *Weſtminſter-Hall*, or of the great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter* or *Durham*, and ſhall be ſworn before a perſon duly authorized to take affidavits in this court, except where the party or parties reſpectively, at the time of their acknowledging ſuch warrant or warrants of attorney, ſhall be in that part of *Great-Britain* called *Scotland*, or in *Ireland*, or in ſome other parts beyond the ſeas: and in caſe the ſaid party or parties ſhall be in *Scotland*, then the ſaid affidavit or affidavits ſhall be made by one of the clerks of his majeſty's ſignet, and ſworn before one of the judges or other perſon duly authorized to take affidavits or depoſitions in the court of ſeſſion or court of exchequer in that part of the united kingdom: But if the ſaid party or parties ſhall be in *Ireland*, or in any other parts beyond the ſeas, then the ſaid affidavit or affidavits ſhall be made by one of the commiſſioners who hath taken the acknowledgment of ſuch warrant or warrants of attorney, and ſhall be ſworn either before ſome perſon duly authorized to take

affidavits in this court, or before ſome magiſtrate of the place where ſuch acknowledgement ſhall be taken, having authority to adminiſter an oath, and in the preſence of a public notary, which notary ſhall alſo certify in writing under his hand and ſeal, as well the due adminiſtring of the ſaid oath, as alſo the name, ſignature, and office of the magiſtrate adminiſtring the ſame.

By the COURT.

The FORM of the AFFIDAVIT.

In the Common Pleas.

A. B. *of in the county of gentleman, one of the attornies of his majeſty's court of and one of the commiſſioners named in the writ of* Dedimus Poteſtatem, *for receiving the attorney or attornies of* C. D. *and* E. *his wife* (*&c.*) *maketh oath, and ſaith, That he knows the ſaid* C. D. *and* E. *his wife* (*&c.*) *and that they, and each* (*or every*) *of them, did duly ſign and acknowledge, in the preſence of this deponent, and of* F. G. *another commiſſioner named in the ſaid writ, the warrant* (*or warrants*) *of attorney, a copy whereof is hereunto annexed, on the day and year* (*or ſeveral days and years*) *mentioned in the caption* (*or ſeveral captions*) *thereof. And that the ſaid* C. D. *and* E. *his wife* (*&c.*) *and alſo this deponent, and the ſaid* F. G. *were, at the time of acknowledging and taking the ſaid warrant* (*or warrants*)

warrants) of attorney, all of full age and competent understanding. And that the said E. *was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged her warrant of attorney aforesaid. And that the said* C. D. *and* E. *his wife (&c.) respectively knew that the said warrant (or warrants) of attorney was (or were) intended for the suffering of a common recovery to pass his, her, or their estate or estates.* "*And this deponent further saith, That the razure (or razures) interlineation (or interlineations) appearing in the said original warrant (or warrants) of attorney, was (or were) made before any of the parties signed the said warrant (or warrants;) and the razure or razures) interlineation (or interlineations) appearing in the said original caption (or captions) was (or were) made before the said commissioners signed the same.*

To be added in part or in the whole, if any razure, &c. in the warrant or caption, as the case may require.

Or thus, if the affidavit is not made by a commissioner.

In the Common Pleas.

A. B. *of* *in the county of* *gentleman, one of the attornies of his majesty's court of* *maketh oath, and saith, That he knows* C. D. *and* E. *his wife (&c.) and that they, and each (or every) of them, did duly sign and acknowledge, in the presence of this deponent, the warrant (or warrants) of attorney, a copy whereof is hereunto annexed, on the day and year (or several*

 days

days and years) mentioned in the caption (or several captions) thereof; and that they the said C. D. *and* E. *his wife* (*&c.*) *and* F. G. *and* J. K. *gentlemen, the commissioners taking the said acknowledgment* (*or acknowledgments*) *were, at the time of acknowledging and taking the said warrant* (*or warrants*) *of attorney, all of full age, &c. as in the former affidavit.*

When the *Dedimus* is returned, you carry it to the cursitor, who will make out a *Mittimus* and transcript, and also the writ of entry.

In the mean time you make out the writs of summons and seisin in the manner herein after directed, which are to be signed by the prothonotary, and then sealed.

You also get the recovery passed at bar (which may regularly be done any day after the return of the writ of summons, as to which *videa postea)* and for that purpose you write the *Praecipe* on paper in the same manner as before directed for the *Dedimus*, only adding the term, and prothonotary's name, at the top; you attend with the tenant at *Westminster*, and deliver the *Praecipe* to a serjeant's clerk, who will get it passed for you, as before is mentioned.

You get the writ of entry signed by the attorney general, (though that is often done last of all,) compound for the fine at the alienation office, and get the writs of entry, summons and seisin, returned in manner before directed.

You

You then prepare your entries, which in this caſe are two, the forms of which follow; the firſt of which is called the ſummons roll, and is to be wrote in an ingroſſing; the ſecond, called the recovery roll, begins with the *Mittimus*, and tranſcript, which is to be wrote in a ſmaller hand; and the reſt of that roll in an ingroſſing hand; theſe rolls you have from the prothonotary.

You then prepare and ingroſs the exemplification, the form of which you will find among the following precedents; and then paſs the whole at the prothonotary's office, in manner before directed.

The firſt, or ſummons roll.

Shropſhire, to wit. R. R. gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſſuages [*the parcels as before*] with the appurtenances in *B. L. B. C.* and *L.* as his right and inheritance, and into which the ſame *A.* hath not entry, but after the diſſeiſin, which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* And

To be wrote in an ingroſſing hand.

into which, &c. And thereof he bringeth suit, &c.

And the said *A.* in his proper person, cometh and defendeth his right when, &c. And thereupon voucheth to warrant *R. W.* esquire, and *W. W.* gentleman, summoned in the county aforesaid, and let him have them here, from the day of Saint *Martin* in fifteen days, by the aid of the court, &c. The same day is given here to the parties aforesaid, &c. And upon this the said *A.* putteth in his place *J. W.* and *T. B.* his attorney, jointly and severally, against the said *R. R.* to gain or lose in the plea aforesaid, &c.

The second roll.

To be wrote in a smaller hand.

OUR lord the king sent to his justices of the bench here this writ of *Mittimus* closed, together with the tenor of a certain writ of our said lord the king of *Dedimus potestatem*, for the receiving a warrant of attorney, and the return of the same; and also the warrant of attorney thereupon received, in these words:

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To his justices of the bench, greeting. We send you, inclosed in these presents, the tenors of our certain writ of *Dedimus potestatem*, directed to our trusty and well-beloved Sir

J. B.

J. B. knight, and to our beloved *G. M.* and *T. M.* gentlemen, for and concerning the receiving the attorney or attornies, jointly or severally, whom or who *R. W.* esquire, and *W. W.* gentleman, will appoint or constitute in their stead, before the aforesaid Sir *J. G.* and *T.* or two of them, against *R. R.* gentleman, to gain or lose in a plea of land upon our writ of entry upon disseisin *in le post*, depending before you, between the aforesaid *R. R.* and *A. B.* gentlemen, concerning twenty messuages, *&c.* [*naming all the parcels as before,*] with the appurtenances, in *B. L. B C.* and *L.* in *Shropshire*; which same *A.* hath vouched the same *R. W.* and *W.* to warrant to him the messuages aforesaid, and other the premisses with the appurtenances; also the return of the same writ of *Dedimus potestatem*; and likewise a warrant of attorney received in that behalf sent into our *Chancery*, and remaining on the files of the same *Chancery*, commanding you, that, inspecting the said tenors, you cause farther to be done therein at the prosecution of the said *R. R.* what of right, and according to the law and custom of *England*, shall be meet to be done. Witness ourself at *Westminster* the twenty first day of *November* in the seventh year of our reign. *Sykes.*

George the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To his trusty and well-beloved Sir *J. B.* knight, and to his beloved *G. M.* and *T. M.* gentlemen, greeting. Whereas our writ of entry upon disseisin

ſeiſin *in le poſt* is depending before our juſtices of the bench, between *R. R.* gentleman, and *A. B.* gentleman, concerning twenty meſſuages, &c. [*all the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropſhire*; and the ſaid *A.* appearing in our full court before our juſtices aforeſaid, hath vouched *R. W.* eſquire, and *W. W.* gentleman, to warrant to him the meſſuages aforeſaid, and other the premiſſes, with the appurtenances: Whereupon our writ of ſummons to warrant hath iſſued forth againſt the ſaid *R. W.* and *W.* returnable before our juſtices aforeſaid, from the day of Saint *Martin* in fifteen days. And foraſmuch as the ſaid *R. W.* and *W.* are ſo infirm, that they cannot, without the greateſt bodily danger, travel to *Weſtminſter* at the day in our ſaid writ of ſummons to warrant contained, to do and act thoſe things which then and there ſhall be expedient to be done in the ſame, as we are informed; we, tendering the condition of the ſaid *R. W.* and *W.* in this behalf, have given to you, or two of you, power and authority to receive the attorney or attornies jointly or ſeverally, whom or who the ſaid *R. W.* and *W.* before you, or two of you, will appoint or conſtitute in their ſtead, to gain or loſe in the ſaid plea before our ſaid juſtices: And therefore we command you, or two of you, that you go in perſon unto the ſaid *R. W.* and *W.* if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or ſeverally, in form aforeſaid; and when you

ſhall

ſhall have received the ſaid attorney or attornies, you diſtinctly and plainly, without delay, certify us in our *Chancery* under your ſeals, or the ſeals of two of you, of the name or names of ſuch attorney or attornies, ſending back unto us this writ. Witneſs ourſelf at *Weſtminſter*, the fourth day of *November* in the ſeventh year of our reign, *Sykes.* By the lord chancellor of *Great Britain*, at the inſtance of the demandant *H.* C. J. *Wilmot.* The execution of this commiſſion appears in a certain ſchedule to this commiſſion annexed. *G. M. T. M.* Received 6*s.* 8*d.* *R. Salkeld.* Shropſhire, *to wit*, *R. W.* eſquire, and *W. W.* gentleman, whom *A. B.* gentleman, vouched to warrant, put in their place *J. Sharpe* and *E. C.* their attornies, jointly and ſeverally againſt *R. R.* gentleman, of a plea of land, &c. *R. W.* *W. W.* Taken and acknowledged the 18th day of *November* in the ſeventh year of the reign of king *George* the third, before *G. M.* *T. M.*

Ingroſſing band. Elſewhere, as it appeareth of this ſame term upon the 421ſt roll, it is thus contained: Shropſhire, *to wit*, *R. R.* gentleman, in his proper perſon, demandeth againſt *A. B.* gentleman, twenty meſſuages, &c. [*naming the parcels as before*,] with the appurtenances, in *B. L. B. C.* and *L.* as his right and inheritance; and into which the ſame *A.* hath not entry, but after the diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without judgment, hath made to the ſaid *R.* within thirty years, &c. And whereupon he ſaith, that he

he was seised of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth suit, *&c.*

And the said *A.* in his proper person, cometh and defendeth his right when, *&c.* and thereupon voucheth to warrant *R. W.* esquire, and *W. W.* gentleman, summoned in the county aforesaid; let him have them here from the day of Saint *Martin* in fifteen days, by the aid of the court, *&c.* The same day is given here to the parties aforesaid, *&c.* And upon this the said *A.* putteth in his place *J. W.* and *T. B.* his attornies jointly and severally, against the said *R. R.* to gain or lose in the plea aforesaid, *&c.* At which day here cometh as well the said *R. R.* in his proper person, as the said *A. by the said J. W.* his attorney. And the said *R. W.* and *W.* being summoned, *&c.* likewise come by *J. S.* their attorney, and freely warrant the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, to the said *A. &c.* And hereupon the said *R. R.* demandeth against the said *R. W.* and *W.* tenants by their own warranty, the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, in manner aforesaid, *&c.* And whereupon he saith, that he was seised of the tenements, common, fairs, markets,

kets, toll, ſtallage and pickage aforeſaid, with the appurtenances in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *R. W.* and *W.* tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *Edmund Wilſon*, who is preſent here in court in his proper perſon, and freely warranteth to them the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, *&c.* And hereupon the ſaid *R. R.* demandeth againſt him the ſaid *Edmund*, tenant by his own warranty, the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in manner aforeſaid, *&c.* And whereupon he ſaith, that he was ſeiſed of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, in his demeſne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth ſuit, *&c.*

And the ſaid *Edmund* tenant by his own warranty defendeth his right when, *&c.* and ſaith, that the ſaid *H.* did not diſſeiſe the ſaid *R. R.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, as the ſaid *R. R.* by

 his

his writ and declaration above doth ſuppoſe: And of this he putteth himſelf upon the country, *&c.*

And the ſaid *R. R.* thereupon craveth leave to imparle, and he hath it, *&c.* And afterwards the ſaid *R. R.* cometh again here into court in this ſame term, in his proper perſon; and the ſaid *Edmund* although ſolemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is conſidered, that the ſaid *R. R.* recover his ſeiſin againſt the ſaid *A.* of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances; and that the ſaid *A.* have of the land of the aforeſaid *R. W.* and *W.* to the value, *&c.* And furthermore, that the ſaid *R. W.* and *W.* have of the land of the ſaid *E.* to the value, *&c.* And the ſaid *Edmund* in mercy, *&c.* And hereupon the ſaid *R. R.* prayeth a writ of our lord the king, to be directed to the ſheriff of the county aforeſaid, to cauſe full ſeiſin of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid, with the appurtenances, to be delivered to him; and it is granted to him returnable here in eight days of Saint *Hilary*: At which day the ſaid *R. R.* cometh here into court in his proper perſon; and the ſheriff, namely Sir *R. A.* baronet, now returneth, that he, by virtue of the aforeſaid writ to him directed on the ſixth day of *December* laſt, did cauſe full ſeiſin of the tenements, common, fairs, markets, toll, ſtallage and pickage aforeſaid,

aforesaid, with the appurtenances, to be delivered to the aforesaid *R. R.* as by the said writ he was commanded, *&c.*

A common recovery was amended by inserting the word *Marsham* (being the name of a parish) among the parishes mentioned in the recovery, upon an affidavit made by the vouchee, that some part of the lands, whereof the recovery was intended to be suffered, extended into and lay in the parish of *Marsham* in *Kent*, and that the same was intended to be comprized in and passed by the indenture of bargain and sale, and the recovery, altho' the said parish of *Marsham* was not mentioned either in the recovery, or said deed to lend the uses thereof. 3 *Wils. Rep.* 154.

The

The exemplification of a recovery, where the tenant appears in person, and the vouchee on summons.

GEORGE *the third, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c. *To all to whom these our present letters shall come, greeting. Know ye that amongst the pleas of land inrolled at* Westminster, *before Sir——— ——— knight, and his brethren, our justices of the bench of the term of* Easter *in the* sixth *year of our reign, upon the* forty-second *roll, it is thus contained*; Elsewhere as it appears in the term of Saint *Hilary* last past, upon the *three hundredth and third* roll, it is thus contained *:

The recovery as entered on the roll, the exemplification being without paragraphs.

Somersetshire, *ss. A. B. (the demandant)* in his proper person demandeth against *C. D. (the tenant)* one messuage [*reciting the parcels*] with the appurtenances in *D.* as his right and inheritance, and into which the same *C.* hath not entry but after the *Disseisin,* which *Hugh Hunt* thereof unjustly and without judgment hath made to the said *A.* within thirty years, *&c.* and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances in his demesne as of fee and right, in time of peace, in the time

* When vouchee appears at bar, insert the return of the writ of entry, thus; " Entry returnable in 15 days of Saint *Martin*."

of

of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth suit, *&c.*

And the said *C.* in his proper person cometh and defendeth his right when, *&c.* and thereupon voucheth to * warrant *W. W.* and *M.* his wife, summoned in the county aforesaid; let him have them here *from* Easter-*day in five weeks*, by the aid of the court, *&c.* the same day is given here to the parties aforesaid, *&c.* And upon this the said *C.* putteth in his place *G. H.* and *J. K.* his attornies jointly and severally, against the said *A.* to gain or lose of the plea aforesaid, *&c.* at which day here cometh, as well the said *A.* in his proper person, as the said *C.* by the said *G. H.* his attorney, and the said *W.* and *M.* being summoned, *&c.* likewise come by *T. T.* their attorney, and freely warrant the tenement aforesaid, with the appurtenances to the said *C.* *&c.* And hereupon the said *A.* demandeth against the aforesaid *W.* and *M.* tenants by their own warranty, the tenements aforesaid, with the appurtenances, in manner aforesaid, *&c.* and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof he bringeth suit, *&c.*

And the said *W.* and *M.* tenants by their own warranty, defend their right when, *&c.*

* *If there be no summons, then say,* voucheth to warranty *W. W.* (*the vouchee*) who is present here in court in his proper person, and freely warranteth the tenements aforesaid, with the appurtenances, to the said *C.* &c. and hereupon the said *A.*—

 and

and thereupon they further vouch to warrant *Edmund Wilson*, who is present here in court in his proper person, and freely warranteth to them the tenements aforesaid, with the appurtenances, *&c.* And hereupon the said *A.* demandeth against him the said *Edmund*, tenant by his own warranty, the tenements aforesaid, with the appurtenances, in manner aforesaid, *&c.* and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, *&c.* and into which, *&c.* and thereof he bringeth suit, *&c.*

And the said *Edmund* tenant by his own warranty defendeth his right, when, *&c.* and saith, that the said *Hugh* did not disseise the said *A.* of the tenements aforesaid, with the appurtenances, as the said *A.* by his writ and declaration above doth suppose; and of this he putteth himself upon the country, *&c.*

And the said *A.* thereupon craveth leave to imparle, and he hath it, *&c.* and afterwards the said *A.* cometh again here into court in this same term in his proper person, and the said *Edmund*, altho' solemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is considered that the said *A.* recover his seisin against the said *C.* of the tenements aforesaid, with the appurtenances; and that the said *C.* have of the land of the aforesaid *W.* and *M.* to the value, *&c.* And further-

ore

more, that the said *W.* and *M.* have of the land of the said *Edmund*, to the value, *&c.* and the said *Edmund* in mercy, *&c.* And hereupon the said *A.* prays a writ of the lord the king, to be directed to the sheriff of the county aforesaid, to cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to him, and it is granted to him, returnable here * forthwith, *&c.* Afterwards, that is to say, the seventh day of *May* in this same term, the said *A.* cometh here into court in his proper person, and the sheriff, namely, *R. S.* esquire, now returneth, that he, by virtue of the aforesaid *writ to him directed*, on the † *fifth* day of the

* Or, returnable here in *three weeks from* Michaelmas *day* (*or as the return is*) at which day the said *A.* cometh here—

Note; you may get ready your writ of seisin, and seal it, and return it with your writ of entry. The writ of seisin ought to be made returnable at least 15 days after the teste day of the return of the writ of entry; but if the writ of entry be returnable towards the latter end of the term, so that there are not 15 days between the return of the writ of entry and the last return of the term, then the writ of seisin must always be made (*returnable indilate*) and the writ of seisin must always bear *Teste* the teste-day of the return of the writ of entry, when there is no summons. But if the writ of entry be made returnable the last return of the term, then the writ of seisin must be returnable the first return of the subsequent term.

† You may suppose seisin to be delivered any reasonable time (so it be not on a *Sunday*) between the *Teste* and return, allowing that a man might ride from *Westminster* to the land, and back again by that time, which may be supposed to be done in six days, in any part of *England*.

same month of *May*, did cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the aforesaid *A.* as by the said writ he was commanded, *&c.* All and singular which premisses, at the request of the said *A.* by the tenor of these presents, we have commanded to be exemplified, in testimony whereof, we have caused our seal, appointed for sealing of writs in the bench aforesaid, to be affixed to these presents. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the * *seventh* day of *May*, in the——year of our reign.

Thus far as on the roll.

The writ of summons for the first vouchee.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *S.* greeting. Summon by good summoners (*the vouchee*) that he be before

* You must teste your exemplification after the return of the writ of seisin, if such writ be returnable in the same term in which judgment was given; but if the writ of seisin be returnable of a subsequent term, then you *Teste* your exemplification the last day of the term in which judgment was given. And observe that immediately after the awarding the *return* of the writ of seisin, you go on in the exemplification, *All and singular which premisses* [&c. as in the foregoing,] and then upon the folding up of the bottom of the exemplification you indorse the return of the sheriff thus, *At which day the said* A. B. *cometh here into court in his proper person, and the sheriff namely* R. S. *esquire, now returneth* [&c. as before. But on the roll you make no such distinction.

our juſtices at *Weſtminſter the return**) to warrant to (*the tenant*) one meſſuage and ten acres of land, with the appurtenances in *D.* which (*the demandant*) in our court before our juſtices at *Weſtminſter* claimeth as his right by our writ of entry upon diſſeiſin in *le poſt* againſt the ſaid (*the tenant*) and whereof the ſaid (*the tenant*) in our ſaid court, hath vouched the ſaid (*the vouchee*) to be ſummoned in your county, to warrant againſt the ſaid (*the demandant*) and have then there the ſummoners and this writ. Witneſs Sir *John Eardley Wilmot*, knight, at *Weſtminſter*, the † —— day of —— in the —— year of our reign.

Summons for the ſecond vouchee.

GEORGE the third [&c.] to the ſheriff of *S.* greeting. Summon by good ſummoners (*the ſecond vouchee*) that he be before our juſtices at *Weſtminſter* (*the fourth*

* There were formerly nine returns, between the return of the writ of *Entry* and return of the writ of *Summons*, and ſo betwixt one writ of ſummons and another; but by the *Statute* 17 *Car.* 2. *cap.* 6. they are abridged to five returns incluſive. And by the *Statute* 24 *Geo.* 2. *c.* 48. to four returns incluſive. For example, if the writ of entry be returnable, on the morrow of *All Souls day*, then the writ of ſummons muſt be returnable, *in fifteen days from the day of St.* Martin, accounting the return of the writ of entry for one, and then the fourth return is the ſummons: And ſo it is betwixt one ſummons and another.

† The firſt writ of ſummons muſt bear teſte the fourth day incluſive from the return of the writ of entry, and ſo a ſecond ſummons from the return of the firſt.

return from the first summons inclusive) to warrant to (*the first vouchee*) whom (*the tenant*) in our court before our said justices at *Westminster*, heretofore did vouch to warrant, one messuage (*reciting the parcels*) which (*the demandant*) in our said court claimeth as his right, by our writ of entry upon disseisin in *le post* against the said (*the tenant*) and whereupon the said (*the first vouchee*) in our said court hath further vouched the said (*the second vouchee*) to be summoned in your county, to warrant against the said (*the demandant*) and have then there the summoners and this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the—— day of——(*Teste the appearance day of the return of the first summons*) in the——year of our reign.

The writ of seisin.

GEORGE the third [*&c.*] to the sheriff of———greeting. Know you that (*the demandant*) in our court before our justices at *Westminster*, hath recovered his seisin against (*the tenant*) of one messuage (*reciting the parcels*) by our writ of entry upon disseisin in *le post*; and therefore we command you, that without delay you cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the said (*the demandant*) and in what manner you shall have executed this our command, that you make appear to our justices at *Westminster* * forthwith, and

* Returnable immediately, because not 15 days in the term from the teste, the teste being the fourth day after inclusive from the return of the second summons, if it be not *Sunday*.

that

that you have then there this writ. Witness, (*&c.*)

By virtue of this writ to me directed on the *——day of ——in the year within written, I caused full seisin of the tenements within specified, with the appurtenances, to be delivered to the within named (*the demandant*) as within I am commanded.

The return. You return this yourself.

T. T. esquire, sheriff.

If the recovery be with a treble voucher, you enter it as before, to

—— And the said *W.* and *M.* (*his wife*) tenants by their own warranty defend their right when, *&c.* and thereupon they further vouch to warrant *J. S. gentleman* (*the second vouchee*) summoned in the county aforesaid; let them have him here (*the return*) by the aid of the court, *&c.* the same day is given there, as well to the said *A.* and *C.* as to the said *W.* and *M.* tenants by their warranty, *&c.* At which day come here as well the said *A. B.* in his proper person, as the said *C. D.* and the said *W. W.* and *M.* (*his wife*) by their attorney aforesaid: And the said *J. S.* being summoned, *&c.* cometh likewise by *K. L.* his attorney, and freely warrants the tenements aforesaid, with the appurtenances, to the said *W.* and *M.* *&c.* and thereupon the said *A.* demandeth against the said *J.*

A recovery with treble vouchers.

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* Any reasonable day between the teste and return.

(*who vouches the common vouchee as* W. W. &c. *the first vouchee did in the former, and so proceed till you come to the judgment*) and that the ſaid *C.* have of the land of the ſaid *W.* and *M.* to the value, *&c.* and further, that the ſaid *W.* and *M.* *&c.* have of the land of the ſaid *J.* to the value, *&c.* and furthermore, that the ſaid *J.* have of the land of the ſaid *Edmund*, to the value, *&c.* and the ſaid *Edmund* in mercy, *&c.* and hereupon the ſaid *A.*—(*as in the former.*)

BILL of DISBURSEMENTS on ſuffering a COMMON RECOVERY, in a PLEA of LAND.

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Peruſing writings and papers, and drawing deed to lead the uſes	0	0	0	0	6	8	0	13	4
Precipe for entry, and copy for curſitor	0	0	0	0	1	6	0	3	0
Writ of entry and fine	0	8	0	0	11	4	0	14	2
King's fine	5	10	6	5	10	6	5	10	6
Attending to compound ſame	0	0	0	0	3	4	0	6	8
Alienation fees	0	3	6	0	3	6	0	3	6
Attorney-general's hand to entry	0	10	0	0	10	0	0	10	0
Attending him	0	0	0	0	1	8	0	3	4
Returning writ of entry	0	1	6	0	1	9	0	2	0
Precipe for bar and copy	0	0	0	0	1	6	0	3	0
Entring ſame on remembrance roll	0	0	0	0	1	6	0	3	0
Tenant's appearance at				0	3	4	0	6	8
bar	0	0	0	0	3	4	0	6	8
Serjeants for arrangement of recovery, for demandant, tenant, firſt and ſecond vouchees	0	8	0	0	10	8	0	13	4
Attending thereon	0	0	0	0	3	4	0	6	8

Prothonotary,

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Prothonotary, secondary, and criers	0	5	0	0	5	0	0	[illegible]	[illegible]
Recovery and award of seisin, and copy 8 *d.* a folio	0	0	0	0	8	0	0	16	0
Entring same on roll	0	0	0	0	6	0	0	12	0
To prothonotaries for entry	0	11	0	0	12	9	0	14	6
Stamp and parchment for exemplification	0	13	6	0	13	6	0	13	6
Exemplifying recovery, fo. 15	0	0	0	0	12	6	1	5	0
Sealing and box	0	3	0	0	3	0	0	3	0
Writ of seisin	0	2	8	0	7	2	0	11	8
Returning	0	1	6	0	1	9	0	2	0
Filing writs of entry, and seisin	0	2	0	0	2	0	0	2	0
Term fees demandant, tenant, first and second vouchee	0	0	0	0	13	4	1	6	8
Letters, *&c.*	0	0	0	0	1	0	0	2	0
Execution of deed to make tenant to *precipe*	0	0	0	0	3	4	0	6	8

Precedents

Precedents of declarations, &c.

Hampshire, *to wit.* J. *R.* and *E.* his wife, by *W.* *S.* their attorney, demand against *A. W.* the third part of two messuages and two gardens, with their appurtenances, in *Gosport*, as the dower of the said *E.* of the endowment of *A. W.* deceased, her late husband, by writ of our lord the king of dower, whereof she hath nothing, *&c.*

Count in dower.

And the said *A.* the now defendant, by *R. P.* his attorney cometh, and saith nothing in bar of the said action of the said *J.* and *E.* whereby the said *J.* and *E.* remain against the said *A.* the now defendant thereof undefended. Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, their seisin of the third part above demanded, with the appurtenances, to be held by them in severalty by metes and bounds; and nothing of the mercy of the said *A.* the now defendant, because he came the first day by summons, *&c.* And hereupon the said *J.* and *E.* say, that the said *A.* late husband of the said *E.* died seised of the tenements aforesaid, with their appurtenances in his demesne as of fee, and pray a writ of the said lord the king to be directed to the sheriff of the county aforesaid, as well to give them full seisin of the said third part with the appurtenances, as to inquire of damages, *&c.* And it is granted to them, returnable here, *&c.* [*the return.*]

Judgment by Nil dicit.

Writ of seisin and inquiry awarded.

At which day here come the ſaid *J.* and *E.* by their ſaid attorney, and the ſheriff, *to wit*, ——— now returneth, that he, by virtue of the ſaid writ to him directed, on the 20th day of *November* laſt paſt, did cauſe full ſeiſin of the third part of the tenements aforeſaid, with the appurtenances (that is to ſay) of one meſſuage, *&c.* to hold the ſame to the ſaid *J. R.* and *E.* in ſeveralty by metes and bounds, for and in the name of the whole dowry of the ſaid *E.* of the tenements aforeſaid, with the appurtenances, happening to her by the death of the ſaid *A.* her late huſband, as by the ſaid writ he was commanded, *&c.* The ſame ſheriff here alſo returneth a certain inquiſition taken before him at the houſe of ——— at ——— in the ſaid county, the ——— day of ——— ——— laſt paſt, by the oath of 12, *&c.* by virtue of the writ aforeſaid, taken, by which it is found, that the ſaid *A. W.* deceaſed, late huſband of the ſaid *E.* in the ſaid writ named, on the ——— day of ——— in the year of our Lord ———, died ſeiſed of and in the tenements aforeſaid, with the appurtenances, in the ſaid writ ſpecified, in his demeſne as of fee, and that the ſaid tenements are of the clear yearly value in all iſſues beyond reprizes of 12*l.* and that 20 years are elapſed ſince the death of the ſaid *A.* the late huſband, *&c.* and that the ſaid *J.* and *E.* have ſuſtained damages by reaſon of detaining of the dower abovesaid, beſides their coſts and charges by them laid out about their ſuit in this behalf to 80*l.* and for

for those costs and charges to 40*s.* Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, as well the value of the third part of the tenements aforesaid, with the appurtenances, from the time of the death of her said late husband, *&c.* (which said value from the time of the death of the said *A.* late the husband of the said *E.* amounteth to 80*l.*) as their damages aforesaid to 82*l.* by the inquisition aforesaid in form aforesaid found, and also 8*l.* 10*s.* to the said *J.* and *E.* at their request, for their costs and charges aforesaid, by the court here for increase adjudged, which said value and damages in the whole amounted to ——, *&c.*

Signed 4th Feb. 1735.

And the said *W.* by *H. B.* who is admitted by the court of the king here to defend in this behalf for the said *W.* who is under the age of 21 years, as the guardian of the said *W.* cometh and saith, that from the death of the said *J.* late husband of the said *M.* he hath been always ready, and still is ready to render to the said *M.* her dower, of the said tenements and premisses, with the appurtenances, and rendereth the same here in court to the said *M.*

Defendant by guardian says, he was always ready to render dower.

And thereupon the said *M.* prayeth leave to impar1 here until the morrow of *All Souls*, and she hath it, *&c.* The same day is given to the said *W.* here, *&c.* At which day came here the aforesaid *M.* by her attorney aforesaid, and the said *W.* by his guardian aforesaid; and because the said *M.* doth not deny

Imparlance.

Judgment. deny the plea of the ſaid *W.* Therefore it is conſidered, that the ſaid *M.* do recover her ſeiſin againſt the ſaid *W.* of the third part of the tenements aforeſaid, with the appurtenances, and nothing of mercy, becauſe the ſaid *W.* came on the firſt day of the ſummons, *&c.* And hereupon the ſaid *M.* ſaith, that the ſaid *J.* her former huſband, *&c.* died ſeiſed of the tenements aforeſaid, with the appurtenances, whereof, *&c.* in his demeſne as of fee; and ſhe prayeth a writ of

Writ of ſeiſin and inquiry. our ſovereign lord the king, to be directed to the ſheriff of the county aforeſaid, as well to cauſe full ſeiſin to be made to her of the ſaid third part of the ſaid tenements with the appurtenances, as alſo to inquire of damages, *&c.* And becauſe by the confeſſion of the ſaid *W.* above it ſeemeth to the court here, that the ſame *W.* from the death of the ſaid *J.* was always ready to render to the ſaid *M.* her dower of the tenements aforeſaid, with the appurtenances, by reaſon whereof the ſaid *M.* ought not to recover the value of third part of thoſe tenements, nor her damages, by occaſion of the detaining her dower aforeſaid, from the time of the death of the ſaid *J.* her ſaid former huſband, until the day of the iſſuing out the ſaid original writ of the ſaid *M.* againſt the ſaid *W.* *to wit*, from the ſixth day of *February* in the year of our Lord 1735. And it ſeemeth to the juſtices here, that the ſaid *M.* ought to recover againſt the ſaid *W.* the value of the third part of the tenements aforeſaid, with the appurtenances, and her damages occa-

ſioned

ſioned by detaining her dower aforeſaid, from the aforeſaid day of iſſuing out the original writ aforeſaid, if, *&c.* Therefore the ſheriff is commanded, that he cauſe to be made to the ſaid *M.* full ſeiſin of a third part of the tenements aforeſaid, with the appurtenances; and that by the oath of good and lawful men of his bailiwic he diligently inquire, if the ſaid *J.* died ſeiſed of the tenements aforeſaid, with the appurtenances, in his demeſne as of fee-ſimple, or in fee-tail; and if he ſhall it find by their inquiſition, then that he inquire upon their oath, how much the tenements aforeſaid are worth by the year in all iſſues above repriſes, according to the juſt value thereof; as alſo what damages the aforeſaid *M.* hath ſuſtained, as well by occaſion of the detaining her dower aforeſaid from the ſaid day of the iſſuing the original writ aforeſaid, beyond the value thereof, as for her expences and coſts by her laid out in this ſuit; and the inquiſition, *&c.*

Plea in dower, husband not ſeiſed.

And the ſaid *T. A.* by *R. H.* his attorney cometh and ſaith, that the ſaid *M.* ought not to have her dower of the ſaid tenements, with the appurtenances, by the endowment of the ſaid *J.* her late huſband, becauſe he ſaith, that the ſaid *J.* her late huſband, *&c.* neither at the day when he married the ſaid *M.* nor at any time afterwards, was ſeiſed of the ſaid tenements, with the appurtenances, whereof, *&c.* of ſuch an eſtate as he could thereof endow the ſaid *M.* And of this he puts himſelf upon the country; and the ſaid *M.* doth ſo likewiſe, *&c.* Therefore, *&c.*

Middleſex,

Debt on a judgment.

Middlesex, *to wit*, *R. D.* late of *London*, carpenter, was summoned to answer unto *L. P.* of a plea, that he render to him 62 *l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from him, *&c.* And whereupon the said *L.* by *J. G.* his attorney, saith, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king *George* the third, in his said majesty's court before Sir ——— —— knight. and his companions, then his said majesty's justices of the bench here at *Westminster* in the county of *Middlesex*, by the consideration of the same court recovered against the said *R.* 62 *l.* which were adjudged to the said *L.* in the same court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings then lately made by the said *R.* to the said *L.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof now remaining in his said majesty's said court here, *to wit*, at *Westminster* aforesaid in the said county of *Middlesex*, may appear; which said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied; and the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62 *l.* yet the said *R.* (although often requested) hath not yet paid the said

4 62 *l.*

62*l.* or any part thereof, to the ſaid *L.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *L.* 20*l.* And thereof he bringeth ſuit, *&c.*

Plea Nul tiel record.

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court before Sir knight, and his brethren, his ſaid majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath above alledged: And this he is ready to verify; therefore prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, *&c.*

Replication, Habetur tale record'

And the ſaid *L.* ſaith, that he by any thing before alledged ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith, that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record; and he prayeth, that the ſaid record may be inſpected and ſeen by the juſtices here, *&c.* And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is told by the ſaid court here to the ſaid *L.* that he have the ſaid record here on ——— The ſame day is given to the ſaid *R.* here, *&c.*

Cooke.

Michaelmas *term in the first year of the reign of king* George *the third.*

Debt by administrator de bonis non, &c. *on a judgment recovered by testator.*

Middlesex, *to wit*, LEWIS *Westcombe*, otherwise called *Westcombe* late of *Rockley* in the county of *York*, esq; was summoned to answer *Robert Richardson*, esq; administrator of the goods and chattels, rights and credits which were of *Robert Fairbeard*, esq; deceased, at the time of his death, by *Anne Swinburne*, widow, executrix of the testament of the said *Robert Fairbeard*, unadministered, with his testament annexed, of a plea, that he render to the said *Robert Richardson* 602 *l.* 10 *s.* of lawful money of *Great Britain*, which he unjustly detaineth from him; and whereupon the said *Robert Richardson*, by *Francis Woodhouse* his attorney saith, that whereas lately, *to wit*, in the term of St. *Hilary* in the fifth year of the reign of our sovereign lady *Anne* late queen of *Great Britain*, &c. in the court of our said lady the late queen, before the then justices of our said lady the late queen of the bench at *Westminster*, he the said *Robert Fairbeard*, by the consideration of the same court recovered against the said *Lewis*, by the name of *Lewis Westcome*, late of *Rockley* in the county of *York*, esq; as well a certain debt of 600 *l.* as 50 *s.* which were adjudged to the said *Robert Fairbeard* for his damages which

which he had by occasion of the detaining that debt, whereof the said *Lewis* was convicted, as by the record and process thereof now remaining in the court of our lord the present king of the bench at *Westminster* aforesaid in the said county of *Middlesex* plainly appeareth; and the said *Robert Richardson* further saith, that the said judgment still remaineth in its full force, strength and effect, no ways satisfied, reversed or annulled; and that the said *Robert Fairbeard* in his lifetime, or the said *Anne Swinburne* in her lifetime, or either of them, or he the said *Robert Richardson* after the death of the said *Anne* (* to which said *Robert Richardson* admini-

* If an archdeacon commits administration, it need not be shewed by what authority, for he is *Oculus episcopi, & de jure ordinario* is to commit administration. *Cluberton* and *Trudgeon*, *Cro. Jac.* 556. *Style* 54. 1 *Lev.* 193. So if granted by an official. *Cro. Eliz.* 102. 2 *Mod.* 65. By commissary. 1 *Lutw.* 9. By chancellor. *Littlet. Rep.* 79, 80. 1 *Leon.* 312. *Hetl.* 68. *Per vicarium generalem in spiritualibus episcopi B. &c.* 1 *Lev.* 312. If granted by dean, it must be shewed by what authority. *Cro. Eliz.* 791. So if granted by *A. B. Sacræ theologiæ* professor. *Morgan* and *Williams*, *Moor* 367. *Pl.* 504 *Cro. Eliz.* 431. Where granted by archbishop, it need not be shewed there were *Bona notabilia*. *Woodward* and *Thomson*, *Cro. El.* 907. Nor need be shewed whether as ordinary, or by his prerogative. *Cro. Eliz.* 6. It is sufficient to shew, that the king granted administration without shewing his power, for he hath universal jurisdiction. *All.* 53. 1 *Sid.* 302. Though in a declaration the bishop's authority to grant administration need not be shewed; yet it is otherwise in a bar. *Churd* and *Bird*, *Cro. Eliz.* 838. And for this diversity *vide*

 1 *Leon.*

ministration of the goods and chattels, rights and credits which were of the said *Robert Fairbeard* at the time of his death unadministered by the said *Anne*, after the death of the said *Anne, to wit*, on the 20th day of *July* in the year of our Lord 1727, at *Westminster* aforesaid in the said county of *Middlesex*, was in due manner, (with the testament of the said *Robert Fairbeard* annexed) committed by *William*, by Divine Providence archbishop of *Canterbury*) have not, nor hath any of them sued out execution against the said *Lewis* upon the said judgment for the debt and damages aforesaid; whereby an action hath accrued to the said *Robert Richardson*, as administrator as aforesaid, to demand and have of the said *Lewis* the said 602 *l.* 10 *s.* *Yet* the said *Lewis*, although often required, &c. hath not paid the said 602 *l.* 10 *s.* to the said [illegible]

1 *Leon.* 312. *Lat.* 79, 80. 1 *Sid.* 302. *Style* 106, 282. 1 *Lev.* 193.——*Palm.* 97, 98. And a diversity taken where committed by one that hath a particular jurisdiction within a certain circuit, for there it ought to be specially shewed, that he is ordinary of that place; but otherwise where committed by an archbishop who hath episcopal jurisdiction, and the power of the bishop. *Skidmore* and *Winston*, *Cro. Eliz.* 879. 1 *Sid.* 228, 302. *Style* 54. 1 *Salk.* 38. 4 *Mod.* 133.

If shewed that administration was *debito modo* granted to the plaintiff *per* A. B. *Commissarium & officialem peculiaris jurisdictionis de* B. it is well enough without shewing he had power to grant administration, for every peculiar hath an ordinary. *Denham* and *Stephenson*, *Salk.* 40. *Mason* and *Hampton*, 4 *Mod.* 133. 1 *Show.* 355. *Comb.* 196. 6 *Mod.* 241.

Robert

Robert Fairbeard in his life-time, or to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, or to either of them, or to the ſaid *Robert Richardſon*, after the death of the ſaid *Anne*; but refuſed to pay the ſame to the ſaid *Robert Fairbeard* in his life-time, and to the ſaid *Anne Swinburne* after the death of the ſaid *Robert Fairbeard*, and ſtill refuſeth to pay the ſame to the ſaid *Robert Richardſon*, and unjuſtly detaineth, in default of the adminiſtration of the goods and chattels, rights and credits of the ſaid *Robert Fairbeard* unadminiſtered by the ſaid *Anne Swinburne* in her life-time, and to the damage of the ſaid *Robert Richardſon* of 10*l.* and thereof he bringeth his ſuit, *&c.* * And the ſaid *Robert Richardſon* bringeth here into court the ſaid letters of adminiſtration, which

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* If one brings an action as adminiſtrator, he muſt make a *Profert in cur.* of his letters of adminiſtration, by which he is intitled to the action. *Cuts* and *Bennet*, *Cro. Jac.* 40[illegible], 412. Held matter of ſubſtance; diverſity where one brings an action, and where one pleads an adminiſtration in bar. *Cart.* 227. 6 *Mod.* 242 *Cro. Jac.* 556. *Vide* 1 *Sid.* 98. *Style* 236, 282. A verdict did not help, becauſe not neceſſary to be proved on the trial. But it is now remedied by 16 & 17 *Car.* 2. *Salk.* 38. 4 *Mod.* 133. *Comb.* 196.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters of adminiſtration. *Stat.* 16 & 17 *Car.* 2. *c.* 8.

No advantage or exception ſhall be taken for the default of alledging the bringing into court letters of adminiſtration; but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down, and ſhewed for cauſe of demurrer. *Stat.* 4 & 5 *Ann. c.* 16.

testify the committing the said administration in form aforesaid; the date whereof is on the day and year in that behalf above-mentioned, *&c.*

Debt on a judgment of the palace court.

Surrey, *to wit*, *J. M.* late, *&c.* was summoned to answer *H. G.* of a plea, that he render to him 99*s.* and 8*d.* which he oweth to and unjustly detaineth from him, *&c.* And thereupon the said *H.* by *J. C.* his attorney faith, that whereas the said *H.* (that is to say) at the court of the king's palace at *Westminster*, held before the judges of the said court there (*to wit* at *Southwark* in the county of *Surrey* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the sixth year of the reign of the present king, by consideration of the said court recovered against the said *J. M.* (by the name of *J. M.*) 99*s.* and 8*d.* which were adjudged to the said *H.* in the aforesaid court of the king's palace at *Westminster*, held before the said judges of the said court there, for his damages which he had sustained, as well by occasion of the not performing several promises and undertakings made by the said *J. M.* to the said *H.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *J.* is convicted, as by the record and proceedings thereof in the same court of the king's palace at *Westminster*, held before the judges of the said court there, *to wit*, at *Southwark* aforesaid, in the county of *Surrey* aforesaid, within the jurisdiction of the said court there remaining

2 may

may appear; which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed or discharged; and the said *H. G.* hath not as yet sued out any execution upon that judgment, by which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 *s.* and 8*d.* *Yet, &c.*

Plea, *Nul tiel record.*

Repl. *Habetur tale record.*

Certiorari *to the judges of that court.*

And thereupon the said *H.* prayeth the king's writ to be directed to the judges of the court of the kings palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, whether there be such record of such recovery of the said 99*s.* and 8*d.* against him the said *J.* by the said *H.* or not; and it is granted to him returnable here ——— At which day here comes as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the court, namely, *W.* duke of *D.* steward of the king's houshold, Sir *P. M.* knight, marshal of the said houshold, and Sir *T. M.* knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made between the parties aforesaid, and remaining before them; which said writ and record remain filed amongst the records here, without day, *&c.*

Whereupon the said *H.* prayeth judgment and his debt aforesaid, together with his da-

mages by reason of detaining the said debt, to be adjudged to him, *&c.*

Dickins.

Trinity *term in the eighth year of the reign of king* George *the third.*

Debt on bond by executor against an heir at law.

London, *to wit.* *JOHN Stout*, late of the town of *Hertford* in the county of *Hertford*, gent. brother and heir of *Henry Stout*, late of the island of *Jamaica*, esq; deceased, otherwise lately called *Henry Stout*, *nunc in* London, *sed de insula* Jamaicæ, *armiger*, was summoned to answer *Sarah Fitter*, widow, executrix of the testament and last will of *James Fitter*, late of *London*, merchant, deceased, of a plea that he render to her 4330*l.* which he unjustly detaineth, *&c.* and whereupon the said *Sarah*, by *Joshua Sharpe* her attorney saith, that whereas the said *Henry*, brother of the said *John*, whose heir he is, in his life-time, *to wit*, on the fifth day of *November* in the year of our Lord 1765, at *London*, *to wit*, in the parish of *St. Mary Le Bow* in the ward of *Cheap*, by his writing obligatory acknowledged himself to be bound to the said *James* in his life-time in the said 4330*l.* to be paid to the said *James* when he should be thereunto required; and to which payment well and faithfully to be made he bound himself and his heirs by the said writing; *Yet* the said *Henry* in his life-time, and the said *John*,

1 Lev. 103, 224.

brother

brother and heir of the ſaid *Henry*, after the death of the ſaid *Henry* (although often required) have not, nor hath either of them paid the ſaid 4330 *l.* to the ſaid *James* in his life-time, or to the ſaid *Sarah* after the death of the ſaid *James*, but refuſed to pay the ſame to the ſaid *James* in his life-time, and to the ſaid *Sarah* after his death; and the ſaid *John* ſtill refuſeth to pay the ſame to the ſaid *Sarah*, and unjuſtly detaineth, in delay of the faithful execution of the ſaid teſtament: Whereupon ſhe ſaith ſhe is injured, and hath damage to the value of 20 *l.* and thereof ſhe bringeth ſuit, *&c.* And the ſaid *Sarah* bringeth here into court, as well the ſaid writing which teſtifieth the ſaid debt in form aforeſaid, whoſe date is the ſame day and year aforeſaid *, as the letters teſtamentary

* When one ſues as executor, he muſt in his declaration ſhew forth the teſtament to intitle him to the action. *Edwards* and *Stapleton*, *Cro. Eliz.* 551. *Cope* and *Lowin*, *Hob.* 38. 1 *Brownl.* 9. *Browning* and *Fuller*, *Cro. Jac.* 299. It is matter of ſubſtance, and not form only. 1 *Brownl.* 200. But whether ſubſtance or form. *Hob.* 233. *Cro. Jac.* 556. 2 *Saund.* 402. 1 *Sid.* 249. Diverſity taken, where upon the executor's own poſſeſſion, and where upon the poſſeſſion of the teſtator. 2 *Rol. Rep* 428. *Hob.* 218. Where the want thereof is helped by the defendant's pleading thereto. 1 *Salk.* 37, 38. 6 *Mod.* 135. *Comb.* 465. *Noy* 63.

After verdict, judgment ſhall not be ſtayed or reverſed for want of a *Profert in curia* of any letters teſtamentary. *Stat.* 16, 17 *Car.* 2. *c.* 8.

No

teſtamentary of the ſaid *James*, whereby it appeareth to the court here, that the ſaid *Sarah* is executrix of the teſtament and laſt will of the ſaid *James*, and thereof hath the adminiſtration, *&c.*

Plea, Riens per diſcent. 1 Lev. 130, 224. Stat. 3, 4 W. & M. c. 14. 5 Mod. 122. Redſhaw *and* Heſter. Jeffry *and* Barrow, Paſ. 10 Annæ. Caſes in law and equity 18.

And the ſaid *John*, by *Thomas Smith* his attorney, cometh and defendeth the force and injury, when, *&c.* and ſaith, That he ought not to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the ſaid writing, be-cauſe proteſting, that the writing aforeſaid is not the deed of the ſaid *Henry*; *And* for plea ſaith, that he hath not any lands or tenements by deſcent, as heir to the ſaid *Henry*, in fee-ſimple, nor had on the day of obtaining the original writ of the ſaid *Sarah*, nor at any time ſince; and this he is ready to verify: Wherefore he prayeth judgment, if he ought to be charged with the debt aforeſaid, as brother and heir of the ſaid *Henry*, by virtue of the writing aforeſaid.

Lilly 147. *Replication.*

And the ſaid *Sarah* ſaith, that by any thing by the ſaid *John* above in pleading alledged, ſhe ought not to be precluded from having her ſaid action againſt him, becauſe ſhe ſaith, that before the day of ob-

No advantage or exception ſhall be taken for the default of alledging the bringing into court of letters teſtamentary, but the court ſhall give judgment according to the right, unleſs the ſame be particularly ſet down and ſhewn for cauſe of demurrer. *Stat.* 4. 5 *Ann. c.* 16.

taining

taining her said original writ, *to wit*, on the 3d day of *April* in the 6th year of the reign of our said lord the now king, the said *John* had *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid, *to wit*, at *London* aforesaid, in the parish and ward aforesaid; and this she is ready to verify: Wherefore she prayeth judgment, and that the said debt, together with the damages by means of the detention of the said debt, may be adjudged unto her, *&c.*

Rejoinder.

And the said *John* saith, that before the day of obtaining the said original writ of the said *Sarah*, he had not *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid *or any part thereof*, as the said *Sarah* hath in replying above alledged: And of this he putteth himself on the country, *&c.* And the said *Sarah* doth so likewise, *&c.*

Debt on a bond by surviving obligees.

Oxfordshire, *to wit*, *A. H.* late, *&c.* (otherwise called, *&c.*) was summoned to answer *W. B. J. V.* and *T. B.* of a plea, that she render to them 10*l.* of lawful money of *Great Britain*, which she oweth to them, and unjustly detaineth, *&c.* and whereupon the said *W. J.* and *T.* by *C. C.* their attorney say, that whereas the said *A.* on the ——— day of ———, in the year of our Lord ——, at ——— in the county aforesaid, by her certain writing obligatory had

had acknowledged herſelf to be bound to the ſaid *W.* and to one *V. S.* now deceaſed (whom the ſaid *W. J.* and *T.* ſurvived) and the ſaid *J.* and *T.* in the aforeſaid 10 *l.* to be paid to them the ſaid *W. V. J.* and *T.* when ſhe the ſaid *A.* ſhould be thereunto required; *Yet* the aforeſaid *A.* (though often required) hath not paid the ſaid 10 *l.* to the ſaid *W. V. J.* and *T.* or any of them, in the life-time of the ſaid *V.* or to the ſaid *W. J.* and *T.* or any of them, ſince the death of the ſaid *V.* (whom the ſaid *W. J.* and *T.* ſurvived) but hath refuſed to pay them the ſame, and yet doth refuſe to pay the ſame to the ſaid *W. J.* and *T.* Whereupon they ſay they are injured, and have damage to the value of 10 *l.* and thereof they bring ſuit, *&c.* And they bring here into court the ſaid writing obligatory, which teſtifieth the debt aforeſaid in form aforeſaid, the date whereof is on the day and year aboveſaid, *&c.*

Debt on a bond by the executor of the obligee.

Middleſex, *to wit*, *J. M.* late of *Weſtminſter* in the county of *Middleſex* aforeſaid, lime-merchant, otherwiſe called *J. M. de paroch. ſanct. Margar' Weſtminſt. in com. Middleſex*, —— was ſummoned to anſwer unto *W. F.* executor of the teſtament and laſt will of *R. F.* his late father deceaſed, in a plea, that he render to the ſaid *W. F.* 200 *l.* which he unjuſtly detaineth from him, *&c.* And whereupon the ſaid *W. F.* by *W. W.* his attorney ſaith, that whereas the aforeſaid *J.* the 22d day of *April* in the

year

year of our Lord 1728, at *Westminster* aforesaid in the county aforesaid, by his certain writing obligatory acknowledged himself to be held and firmly bound unto the aforesaid *R. F.* in his life-time in the aforesaid 200*l.* to be paid to the aforesaid *R. F.* his executors or administrators, when he the said *J.* should be thereunto required: Nevertheless the aforesaid *J.* (although often required) the aforesaid 200*l.* to the aforesaid *R. F.* in his life-time, or, to the aforesaid *W. F.* after the decease of the aforesaid *R. F.* hath not paid, but hath refused to pay them the same, and still refuseth to pay the same to the said *W. F.* and unjustly detaineth the same: Whereupon the said *W. F.* saith that he hath sustained damage to the value of 10*l.* and thereof he bringeth this suit, *&c.* And he bringeth here into court as well the writing obligatory aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is on the day and year aforesaid, as also the letters testamentary of the aforesaid *R. F.* whereby it sufficiently appeareth to the court here, that the aforesaid *W. F.* is the executor of the testament and last will of the aforesaid *R. F.* and thereupon to have administration, *&c.*

Debt on a bond against the executor of the obligor.

J. J. late of, *&c.* executor of the testament and last will of *E. B.* deceased, was summoned to answer *J. T.* of a plea, that he render to him 120*l.* which he unjustly detaineth from him, *&c.* And whereupon the said *J. T.* by *W. W.* his attorney saith, that whereas the above-named *E.* in her life-time,

time, *to wit*, on the —— day of ——, in the year of our Lord ——, at —— in the county of —— aforesaid, by her writing obligatory acknowledged herself to be bound to the said *J. T.* in the aforesaid 120*l.* to be paid to the same *J. T.* when she the said *E.* should be thereunto required; *Nevertheless* the said *E.* in her life-time, or the said *J. J.* after the death of the said *E.* although often required, have not, nor hath either of them paid the said 120*l.* to the said *J. T.* but they refused, and the aforesaid *J. J.* doth still refuse to pay him the same; and whereupon the said *T.* saith he is injured, and hath damage to the value of 10*l.* and thereof he bringeth his suit, &c. and he bringeth here into court the writing aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is on the same day and year aforesaid.

Plea, Ne unques executor.

And the said *J. J.* by *F. B.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *J. T.* ought not to have or maintain his said action against him, because he saith, that he the said *J. J.* never was executor of the testament and last will of *E. B.* deceased, as the said *J. T.* by his said declaration above alledgeth, neither did he ever as an executor of the testament and last will of the said *E. B.* administer any of the goods and chattels which were the said *E. B.*'s at the time of her decease; and this he is ready to verify: Wherefore he prayeth judgment, if the said *J. T.*

J. T. ought to have his ſaid action againſt him, *&c.*

And the ſaid *J.* ſaith, that he ought not to be precluded from having his aforeſaid action againſt the ſaid *J.* becauſe he ſaith that the aforeſaid *J.* hath, as executor of the teſtament and laſt will of the ſaid *E. B.* adminiſtered divers goods and chattels which were of the ſaid *E. B.* at the time of her deceaſe, that is to ſay, at ———— aforeſaid: And this he prayeth may be inquired of by the country, *&c.*

Replication.

Cooke.

Michaelmas *term in the ſeventh year of the reign of king* George *the third.*

Debt on a bail-bond at the ſuit of an attorney.

Surrey, *to wit.* *J. L.* late of Saint *Olave* in *Southwark*, in the county of *Surrey* aforeſaid, woolſtapler, was attached by his preſent majeſty's writ of privilege iſſuing out of this court, to anſwer to *L. R.* gentleman, one of the attornies of his ſaid majeſty's court of common bench here, according to the liberties and privileges of the ſame court for ſuch attornies, and other miniſters of the ſame bench from time beyond the memory of man uſed and approved in the ſame court, in a plea of debt, and whereupon the ſaid *L.* in his proper perſon ſaith, that the ſaid *J.* hath not rendered to him the ſaid *L.* 63 *l.* 2 *s.* of lawful money of *Great Britain*, which he oweth to him, and unjuſtly detaineth,

taineth, for that whereas, on the 29th day of *June* in the 6th year of his present majesty's reign, the said *L* (he being then one of the attornies of the said court of common bench) sued forth out of his majesty's said court of common bench here, *to wit*, at *Westminster* in the county of *Middlesex*, his said majesty's writ, called a writ of attachment of privilege, against the said *J. L.* woolstapler, directed to the sheriff of the said county of *Surrey*, by which said writ the said sheriff was commanded by his said majesty to attach the said *J. L.* if he should be found within his bailiwick and him safely keep, so that he might have him before his said majesty's justices at *Westminster*, on *Monday* next after three weeks from the day of Saint *Michael* then next following, to answer the said *L.* one of the attornies of his said majesty's court of common bench, according to the liberties and privileges of that court for such like attornies and other ministers of the same bench used and approved of in the same, from the time whereof there was not any remembrance to the contrary, in a plea of *trespass upon the case*, and that the said sheriff should have there that writ; which said writ afterwards, and before the return thereof, that is to say, on the 11th day of *August* in the year of our Lord 1766, at the said parish of St. *Olave*, *Southwark*, in the said county of *Surrey*, was delivered by the said *L.* to *J. R.* then, and continually afterwards until the return of the said writ, sheriff of the said county of *Surrey*, to be executed

executed in due form of law; by virtue of which said writ the said *J. R.* afterwards, and before the return of the said writ, that is to say, on the said 11th day of *August* in the said year of our Lord last above-mentioned, at the said parish of St. *Olave Southwark* aforesaid, within his bailiwic, arrested the said *J. L.* and had and detained him there in his custody by virtue of the said writ, until the said *J. L.* afterwards, and before the return of the said writ, *to wit*, on the said 11th day of *August* in the year of our Lord 1767, at the parish of St. *Olave Southwark* aforesaid in the said county of *Surrey*, by his writing obligatory, commonly called a bail-bond, *acknowledged himself* to be held and firmly bound to the said *J. R.* by the name of *J. R.* esq; high sheriff of the county of *Surrey* aforesaid, in the sum of 63*l.* 2*s.* of good and lawful money of *Great Britain*, to be paid to the said sheriff when he should be thereto required, with a condition thereunder written, that if the said *J. L.* should appear before his said majesty's justices at *Westminster*, on the said *Monday* next after three weeks from the day of Saint *Michael*, to answer the said *L.* one of the attornies, and so forth, in the said plea of trespass upon the case, that then that obligation to be void and of no force; otherwise to stand and remain in full force, vigour and effect; which said writing obligatory, with the said condition there under written, was taken by the said sheriff by virtue of the said writ, and by force of the statute in

ſuch caſe lately made and provided. And the ſaid *L.* in fact ſaith, that the ſaid *J. L.* did not appear before his ſaid majeſty's juſtices at *Weſtminſter*, on the ſaid *Monday* next after three weeks from the day of Saint *Michael*, in the condition aforeſaid mentioned, to anſwer to the ſaid *L.* in his ſaid plea of treſpaſs upon the caſe, according to the form and effect of that condition, whereby that writing obligatory became forfeited to the ſaid *J. R.* and the ſame being ſo forfeited, and the money therein mentioned, or any part of it, not being paid, he the ſaid *J. R.* ſheriff of the ſaid county of *Surrey* afterwards, that is to ſay, on the firſt day of *November* in the year of our Lord 1737, at the ſaid pariſh of Saint *Olave Southwark*, aſſigned to the ſaid *L.* the ſaid writing obligatory, by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two credible witneſſes, *to wit*, *E. H.* and *G. N.* according to the form of the ſtatute in ſuch caſe made and provided; by reaſon of which ſaid premiſſes, and by force of the ſtatute in ſuch caſe made and provided, an action hath accrued to him the ſaid *L.* as aſſignee of the ſaid *J. R.* ſheriff of the ſaid county of *Surrey*, to demand and have of the ſaid *J. L.* the ſaid ſum of 63 *l.* 2 *s.* Neverthelеſs the ſaid *J. L.* (although often requeſted) hath not rendered the ſaid ſum of 63 *l.* 2 *s.* to the ſaid *L.* but hitherto always hath refuſed, and ſtill doth refuſe, to render the ſame to the ſaid *L.* and the aforeſaid ſum of money mentioned in the ſaid writing

writing obligatory is ſtill remaining unſatiſfied, to the damage of him the ſaid *L.* of 40*s.* and thereof he bringeth ſuit, *&c.* And the ſaid *L.* bringeth here into court the writing obligatory aforeſaid, in form aforeſaid indorſed, which teſtifieth the ſaid debt in manner aforeſaid, and beareth date the day and year in that reſpect above-mentioned, *&c.*

John Doe, and *Richard Roe,* } Pledges for proſecuting

Hilary *term,* &c.

London, *to wit,* O. *W.* late of *London*, linen-draper, was ſummoned to anſwer our lord the king, and *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf, of a plea that he render to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* 1260*l.* which to our ſaid lord the preſent king and the ſaid *J. C.* who as well, *&c.* he oweth and unjuſtly detaineth, and whereupon the ſaid *J. C.* who as well for our ſaid lord the king as for himſelf proſecuteth in this behalf by *W. W.* his attorney, ſaith, that by a certain indenture made at *London* aforeſaid, *to wit,* in the pariſh of Saint *Mary le Bow* in the ward of *Cheap*, after the firſt day of *May* in the year of our Lord 1710. *to wit*, on the 21ſt day of *Auguſt* in the year of our Lord 1763. between one *T. H.* ſon of *W. H.* late of *C.* in the

Declaration in debt Qui tam *on the ſtat.* 8 Anne, c. 9. ſ. 35. *For not inſerting in indentures of apprenticeſhip the full ſum received.*

county of *Derby*, esq; deceased, and the said *O. W.* and in due manner executed, bearing date on the same day and year, the said *T.* put himself apprentice to the said *O.* by the name of *O. W.* citizen and leather-seller of *London*, to be instructed in his art and business of a linen-draper, to serve as an apprentice from the day of the date of the said indenture, until the full end and term of seven years from thence next ensuing fully to be complete and ended; which said indenture, then and there made and executed, contained all the covenants, articles, contracts and agreements, relating to the serving the said apprenticeship; and that in consideration of the premisses, and for and in respect of the said apprenticeship, the said *T.* then, *to wit*, on the said 21st day of *August* in the said year of our Lord 1763. at *London* aforesaid, in the parish and ward aforesaid, paid to the said *W. O.* 300 pieces of coined gold money of *Great Britain*, called guineas, of the value in ready money of 315*l.* as a reward and consideration for taking the said *T.* to be his apprentice, as aforesaid; and that the said sum of money of 300 pieces of coined gold so given and paid, as aforesaid, was not truly and fully inserted, written and specified in the same indenture, according to the form of the statute in such case lately made and provided, but in the place of it the sum of 300*l.* only was inserted, written and specified in the same indenture, contrary to the form and effect of that statute, whereby an action has accrued to our said lord the king

king and the ſaid *J. C.* who. as well, *&c.* to demand and have of the ſaid O. 630*l.* parcel of the ſaid 1260*l.* being double the ſum ſo given and paid as aforeſaid. *And alſo whereas* by one other indenture made at *London* aforeſaid, in the pariſh and ward aforeſaid, after the firſt day of *May* in the year of our Lord 1710. aforeſaid, *to wit*, on the ſaid 21ſt day of *Auguſt* in the year of our Lord 1763. between one *T. H.* another ſon of the ſaid *W. H.* late of *C.* in the county of *Derby*, eſq; deceaſed, and the ſaid *O. W.* and in due manner executed, bearing date on the ſame day and year, the ſaid laſt-mentioned *T.* put himſelf apprentice to the ſaid *O. W.* to be inſtructed in his ſaid art and buſineſs of a linen-draper, to ſerve him after the manner of an apprentice, from the day of the date of the ſaid laſt indenture, until the full end and term of ſeven years from thence next enſuing and fully to be complete and ended; which ſaid laſt indenture, then and there made and executed, contained all the covenants, articles and agreements relating to the ſerving the ſaid apprenticeſhip laſt mentioned; and that in conſideration of the premiſſes, and for and in reſpect of the ſaid apprenticeſhip laſt mentioned, the ſaid *T.* then, *to wit*, on the ſaid 21*ſt* day of *Auguſt* in the ſaid year of our Lord 1763. at *London* aforeſaid in the pariſh and ward aforeſaid, paid to the ſaid *O. W.* 315*l.* of lawful money of *Great Britain*, as a reward and conſideration for taking the ſaid laſt mentioned *T.* to be his apprentice as aforeſaid; and that the ſaid ſum of 315*l.*

Second count.

ſo given and paid as aforeſaid, was not truly and fully inſerted, written and ſpecified in the ſaid laſt indenture, according to the form and effect of the ſtatute in ſuch caſe lately made and provided, but in the place thereof the ſum of 300*l.* only was inſerted, written and ſpecified in the ſaid laſt indenture, contrary to the form and effect of that ſtatute, whereby an action has accrued to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* to demand and have of the ſaid *O. W.* other 630*l.* reſidue of the ſaid 1260*l.* being double the laſt mentioned ſum ſo given and paid as aforeſaid; *Yet* the ſaid *O. W.* (although often required) hath not yet rendered the ſaid 1260*l.* or any parcel thereof, to our ſaid lord the king and the ſaid *J. C.* who as well, *&c.* or to either of them, but hath hitherto refuſed, and ſtill doth refuſe, to render the ſame to them, to the damage of the ſaid *J. C.* who as well, *&c.* of 10*l.* And thereof as well for our lord the king, as for himſelf, he bringeth ſuit, *&c.*

Debt againſt a ſheriff for an eſcape.

London, *to wit*, *H. H.* late of *London*, knight, and *R. A.* late, *&c.* eſq; were ſummoned to anſwer unto *R. C.* in a plea that they render to him 13*l.* which they owe, and unjuſtly detain from him, *&c.* and whereupon the ſaid *W.* by *J. T.* his attorney ſaith, that whereas the ſaid *W.* by the name of *W. C.* otherwiſe, *to wit*, in the term of the holy *Trinity* in the 6th and 7th years of the reign of the lord the now king, in the court of our lord the now king of the common

common bench at *Westminster*, before Sir knight and his companions, then justices of our lord the king of the same bench at *Westminster*, did recover by judgment of the said court against *T. B.* by the name of *T. B.* 13 *l.* for damages, which he the said *W. C.* hath sustained by reason of the said *T*'.s not performing certain promises and undertakings then lately made to the said *W.* as for his costs and charges by him laid out about the said suit whereof the said *T.* is convicted, as by the record and proceedings thereof remaining in the said court may more fully appear; and the said *W. C.* afterwards, *to wit*, the 13th day of *June* in the fifth year of the reign of the lord the now king, prosecuted out of the said court of common bench, of and upon the said judgment, a certain writ of the lord the now king, directed to the sheriffs of *London*, by which writ the lord the now king commanded them that they should take *T. B.* if he was to be found in their bailiwic, and him safely keep, so that they might have his body before the justices of our lord the king at *Westminster*, in ———— to satisfy *W. C.* for 13 *l.* which in the court of the lord the king, before the justices of our lord the king at *Westminster*, had been awarded to the said *W. C.* for his damages which he had sustained by reason of the not performing several promises and undertakings made by the said *T.* to the said *W.* at *W.* whereof he was convicted. And reciting, whereas the sheriff of the lord the king, of *Middle-*

ſex had returned to the juſtices of the lord the now king at *Weſtminſter*, in ——— then laſt paſt, that the ſaid *T.* was not to be found in his bailiwic; and in as much as it was ſufficiently teſtified in the ſaid court of the lord the king, that he lurked and wandered up and down in their bailiwic, and that they ſhould have there that writ, which writ proſecuted as aforeſaid the ſaid *W. C.* afterwards, and before the return thereof, *to wit*, on the 30th day of *June* in the ſame 7th year of the lord the now king, at *London* aforeſaid, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, delivered to the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* in due form of law to be executed; by virtue of which writ the ſaid *H. H.* and *R. A.* then being ſheriffs of *London* as aforeſaid, afterwards, and before the return of the ſaid writ, *to wit*, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, took and arreſted the ſaid *T.* and then and there had him in their cuſtody in execution for the ſaid damages; and the ſaid *T.* being ſo as aforeſaid in the cuſtody of the ſaid *H. H.* and *R. A.* then being ſheriffs of *London*, in execution for the damages aforeſaid, the ſaid *H. H.* and *R. A.* then being ſheriffs as aforeſaid, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, without the licence and againſt the will of the ſaid *W. C.* voluntarily permitted the ſaid *T.* to go out of their cuſtody at large where he would, the ſaid *W.*

C.

C. of his ſaid damages then or yet not being ſatiſfied, by reaſon whereof an action accrued to the ſaid *W. C.* to demand and have of the ſaid *H. H.* and *R. A.* the ſaid ſum of 13 *l.* yet the ſaid *H. H.* and *R. A.* have not, nor hath either of them rendered to the ſaid *W. C.* the ſaid 13 *l.* but altogether have, and each of them hath hitherto refuſed, and yet do, and each of them doth yet refuſe to render the ſaid 13 *l.* to the ſaid *W. C.* wherefore he ſaith that he is damaged and hath damage to the value of 20 *l.* And thereof he bringeth ſuit, *&c.*

Declaration on a policy of inſurance on a ſhip.

London, *to wit*, *J. B.* late of *London*, merchant, was attached to anſwer *R. S.* of a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *R.* by *W. W.* his attorney complaineth, that whereas the ſaid *R.* the 17th day of *October* in the year of our Lord 1734. at *London* (that is to ſay) in the pariſh of St. *Mary le Bow*, in the ward of *Cheap*, according to the uſe and cuſtom of merchants, cauſed to be made a certain writing of inſurance, commonly called a policy of inſurance, by which ſaid writing the ſaid *R.* by the name of *R. S.* as well in his own name as for and in the name and names of all and every other perſon or perſons to whom the ſame did, might or ſhould appertain in part or in all, did make aſſurance, and cauſed himſelf and them, and every of them, to be inſured, loſt or not loſt, at and from *London* to *Rotterdam*, and thence to

Gambia

Gambia and *Cape Coast*, upon any kind of goods and merchandizes whatsoever, loaden, or to be loaden aboard the good ship or vessel called the *Dolphin*, whereof was master under God for that present voyage *J. N.* or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called, beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at *London* or elsewhere, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at *Rotterdam*, and during her stay there and thence to *Gambia*, and during her stay there and thence to *Cape Coast*, and the same there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that Insurance; the said goods and merchandizes by that agreement were and should be valued at ———, without farther account to be given by the assured for the same. Touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrest, restraints and detainments of all kings, princes and people, of what nation, condition or quality

quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes, that had or should come to the hurt, detriment or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune it should be lawful for the assured, their factors, servants or assigns, to sue, labour and travel for and about the defence, safe-guard and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the assurers, that that writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance thentofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*, and so they the assurers were contented, and did thereby promise, and bind themselves each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators and assigns, for the due performance of the premisses, confessing themselves paid the consideration due to them for that assurance by the assured, at and after the rate of 3*l.* 10*s.* *per cent.* and in case of loss (which God forbid) the assured to abate 10*l.* *per cent.* In witness whereof they the assurers have subscribed their names and sums assured in *London*, as by the said writing more fully appears; of which said writing the said *J.*
afterwards,

afterwards, *to wit*, on the ſaid 17th day of *October* in the ſaid year of our Lord 1734, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and thereupon the ſaid *J.* afterwards, *to wit*, on the day and year laſt mentioned at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *R.* at the ſpecial inſtance and requeſt of the ſaid *J.* had then and there paid to the ſaid *J.* the ſum of 3 *l.* 10 *s.* of lawful money of *Great Britain* (being the reward of the aſſurance of 100 *l.*) and had promiſed to perform all things in the ſaid writing contained on the part of the aſſured, to be performed for the aſſurance of 100 *l.* to be made by the ſaid *J.* according to the tenor of the ſaid writing, he the ſaid *J.* took upon himſelf, and then and there faithfully promiſed to the ſaid *R.* to become the aſſurer of the ſaid *R.* for 100 *l.* to perform all and ſingular the things in the ſaid writing contained to be performed on the part of the aſſurer, according to the true intent and meaning of the ſaid writing (the ſaid ſum of 100 *l.* being the ſum ſubſcribed by the ſaid *J.* to the ſaid writing.) And the ſaid *R.* in fact ſaith, that the ſaid ſhip at the time of the making of the ſaid writing, *to wit*, the ſaid 17th day of *October* in the year 1734, was in ſafety, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and being ſo in ſafety afterwards, *to wit*, on the day and in the year laſt mentioned, the ſaid ſhip laſt mentioned departed and ſailed from *London* aforeſaid, in the pariſh and ward aforeſaid, with

with the ſaid goods and merchandizes loaded thereon, to ſail to *Rotterdam* aforeſaid, and from thence to *Gambia* and *Cape Coaſt* aforeſaid in her ſaid voyage; and the ſaid *R.* further ſaith, that the ſaid ſhip in her ſaid voyage from *Rotterdam* aforeſaid, before her arrival at *Cape Coaſt* aforeſaid, *to wit*, the 29th day of *March* which was in the year of our Lord 1735, in ſailing in her ſaid voyage with goods and merchandizes loaded, and then on board her, to the value of 700 *l.* of lawful money of *Great Britain*, upon the high ſeas was burnt and deſtroyed by fire, and the ſaid ſhip and all the ſaid goods and merchandizes were thereby then totally loſt and deſtroyed, whereof the ſaid *J.* afterwards, on the firſt day of *October* in the ſaid year 1735, at *London* aforeſaid, in the pariſh and ward aforeſaid had notice, and the ſaid *R.* then and there requeſted the ſaid *J.* to pay to him the ſaid *R.* 90 *l.* parcel of the ſaid 100 *l.* aſſured by him the ſaid *J.* as aforeſaid (deducting 10 *l.* the reſidue thereof) in reſpect of the ſaid loſs which the aforeſaid *J.* ought to have paid to the ſaid *R.* according to the ſaid agreement; *Yet* the ſaid *J.* not regarding his ſaid promiſe and undertaking, but contriving, and fraudulently intending to deceive and defraud the ſaid *R.* in this behalf, he the ſaid *J.* (though often requeſted ſo to do) hath not paid to the ſaid *R.* the ſaid 90 *l.* or any part thereof, nor hath in any kind contented him for the ſame, but hath altogether refuſed, and yet refuſeth to pay to the ſaid *R.* the ſaid 90 *l.*

or any part thereof, or in any manner to content him for the ſame.

A count for money had and received, damages 100 *l.*

Declaration on Aſſumpſit *to deliver goods according to agreement, earneſt being given.*

London, *to wit*, *J. P.* late of *Weſtminſter* in the county of *Middleſex*, chymiſt, was attached to anſwer unto *N. G.* in a plea, &c. That whereas the ſaid *J.* on the 29th day of *October* in the year of our Lord 1734, at *London*, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, had bargained and ſold to the ſaid *N.* 100 lb. weight of fine *Turkey Rhubarb*, at the rate of 23 *s. per* pound, amounting in the whole, according to that rate or price, to the ſum of 115 *l.* the ſaid *J.* the ſaid 29th day of *October* at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration of 1 *s.* of good and lawful money of *Great Britain* to him the ſaid *J.* by the ſaid *N.* then and there in hand paid in part of payment, and of the ſum of 114 *l.* 19 *s.* to the ſaid *J.* by the ſaid *N.* to be paid on the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb*, he the ſaid *J.* did then and there undertake, and to the ſaid *N.* then and there faithfully promiſe to deliver the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb* upon the 30th day of the ſaid month of *October* abovementioned, at three of the clock in the afternoon of the ſame day at Mr. *B.*'s coffee-houſe; *Yet* the ſaid *J.* not regarding his ſaid promiſe and undertaking made as aforeſaid, but contriving and fraudulently intending craftily

craftily and ſubtilly to deceive and defraud the ſaid *N.* in this behalf, the ſaid 100 lb. weight of fine *Turkey Rhubarb*, or any part thereof, to the ſaid *N.* hath not delivered (although he the ſaid *N.* was *always* prepared and ready upon the delivery of the ſaid 100 lb. weight of fine *Turkey Rhubarb* in manner aforeſaid, then and there to have paid the ſaid *J.* the ſaid 114 *l.* 19 *s.* which together with the ſaid 1 *s.* paid by the ſaid *N.* to the ſaid *J.* as aforeſaid amount to 115 *l.* (that is to ſay) 23 *s.* for every pound weight of the ſaid 100 lb. weight of the ſaid fine *Turkey Rhubarb*, according to the agreement aforeſaid) but the ſaid *J.* hath hitherto neglected and refuſed, and ſtill doth neglect and refuſe to deliver to the ſaid *N.* the ſaid 100 lb. weight of fine *Turkey Rhubarb.*

Count for money had and received.

Declaration on Aſſumpſit *to pay for a gelding let to a third perſon if he did not return it.*

2 R. Raym. 1085.

London, *ſſ. J. P.* late, *&c.* was attached to anſwer unto *W. C.* in a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *W.* by *R. B.* his attorney complains, that whereas on the —— day of ——— in the year of our Lord 1734, at *London* aforeſaid, in the pariſh of St. *Mary Le Bow* in the ward of *Cheap*, in conſideration that the ſaid *W.* at the ſpecial inſtance and requeſt of the ſaid *J.* would let to hire, and deliver unto a certain perſon then and yet unknown to the ſaid *W.* a certain gelding of the ſaid *W.* to ride from *London* aforeſaid to *Highgate* in the county of *Middleſex*, and ſo back again to *London* aforeſaid, he the ſaid *J.* undertook, and then and there

there faithfully promised the said *W.* to pay him 5*l.* 5*s.* if that person did not return the said gelding to the said *W.* the same day; and the said *W.* doth aver, that he, confiding in the aforesaid promise of the said *J.* afterwards, *to wit*, the same day and year abovesaid at *London* aforesaid, in the parish and ward aforesaid, at the said request of the said *J.* did let to hire, and deliver unto the said person so unknown to the said *W.* the said gelding of the said *W.* to ride from *London* aforesaid to *Highgate* aforesaid, and so back again to *London* aforesaid; and that the said person so unknown to the said *W.* did not the same day, or at any time afterwards, return the said gelding to the said *W.* whereof the said *J.* had notice, and therefore the said *J.* according to his aforesaid promise and undertaking, ought to have paid unto the aforesaid *W.* the said sum of 5*l.* 5*s.* *Yet* the said *J.* not regarding his aforesaid promise and undertaking, *&c.*

Trover by assignees of commissioners of bankruptcy.

Wilts, *to wit*, *E. D.* late, *&c.* and *R. M.* late, *&c.* were attached to answer *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case, *&c.* and whereupon the said *J.* and *R.* by *S. S.* their attorney complain, that they the said *J.* and *R.* on the —— day of —— in the year of our Lord —— at *Bradford* in the said county of *Wilts*, were possessed of 30 broad cloths of the value of 600*l.* as of their own

own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt) and being thereof so possessed, they the said *J.* and *R.* the said 30 broad cloths out of their hands and possession casually lost and mislaid; which said 30 broad cloths afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; and though the aforesaid *E.* and *R.* knew the aforesaid cloths to be the proper goods and chattels of the aforesaid *J.* and *R.* and to them as assignees of the debts, goods and chattels of the said *S. L.* the bankrupt, of right to belong and appertain: *Yet* they the aforesaid *E.* and *R.* contriving and fraudulently intending the aforesaid *J.* and *R.* of the aforesaid cloths, to deceive and defraud, have not, nor hath either of them delivered the aforesaid cloths, or any of them to the aforesaid *J.* and *R.* although they have by them been often requested to deliver the same; but they the aforesaid *E.* and *R.* afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid *J.* and *R.* 600 *l.* And thereof they bring suit, &c.

Declaration at the suit of an infant by his Prochein amy *against a sheriff for a false return, where-*

Middlesex, *to wit*, *R. W.* late of *Westminster* in the county aforesaid, esq; and *D. L.* late of the same, esq; late sheriff of the county of *Middlesex*, were attached to answer unto *J. H.* of a plea of trespass on the case, &c.

by the plaintiff was taken on an attachment for a rescous.

&c. and whereupon the said *J. H.* by *J. H.* who is admitted by his majesty's court here to prosecute for the said *J. H.* who is within the age of 21 years, as the next friend of the said *J. H.* complaineth, that whereas on the 23d day of *January* in the term of St. *Hilary* in the seventh year of the reign of his present majesty, a writ of his said majesty issued out of his said majesty's court of common bench here, *to wit*, at *Westminster* in the said county, directed to the then sheriff of *Middlesex*; by which said writ the said sheriff was commanded, that he should take *J. H.* then late of *St. Giles's* in the said county, scavenger, and *J. D.* if they should be found in his bailiwic, and them safely keep, so that the said sheriff might have their bodies before the justices of his said majesty here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to answer *T. B.* in a plea of trespass; and also that the said *J.* might answer the said *T.* according to the custom of the said court of Common Bench here, of a certain plea of trespass on the case upon promise, to the damage of him the said *T.* 20*l.* and that the said sheriff should then have there the said writ; which said writ afterwards, and before the return thereof, *to wit*, on the 9th day of *February* in the 7th year aforesaid, at *Westminster* aforesaid, was delivered to the said *R. W.* and *D. L.* then, and until and after the return of the said writ, being sheriff of the said county, to be executed in due form of law; *Yet* the said *R. W.* and *D. L.* then, and

4 until

until and after the return of the ſaid writ, being ſheriffs as aforeſaid, not regarding the duty of the ſaid office of ſheriff of the ſaid county, but contriving and fraudulently intending to injure and oppreſs the ſaid *J.* in this particular, afterwards, *to wit*, at the return of the ſaid writ, did falſly, and in deceit of the ſaid court here return to and upon the ſaid writ to the juſtices of his ſaid majeſty here, *to wit*, at *Weſtminſter* aforeſaid, that by virtue of his ſaid writ to him directed, he made his warrant directed to *S. L. J. D.* and *R. R.* his bailiffs of the hundred of *Oſſulſton*, jointly and ſeparately to take and arreſt the ſaid *J. H.* in the ſaid writ named, by virtue of which ſaid warrant the aforeſaid *S. L.* afterwards, and before the return of the ſaid writ, *to wit*, on the 1ſt day of *April* in the 7th year aforeſaid, at the pariſh of *St. Giles's in the Fields* in the ſaid county, within the ſaid hundred of *Oſſulſton* in the ſaid ſheriff's bailiwic, did take and arreſt the ſaid *J. H.* according to the command of the ſaid writ, and then and there kept him in ſafe cuſtody, until *E. H.* wife of the ſaid *J. H.* and the ſaid *J.* by the name of *J. H. &c.* and divers other perſons unknown to the ſaid then ſheriff, and to the ſaid *S. L.* at the pariſh of *St. Giles* aforeſaid, with force and arms in and upon the ſaid *S. L.* the ſaid then ſheriff's bailiff aforeſaid, made an aſſault, and beat, wounded and ill-treated him, and then and there reſcued, and each and every of them did then and there reſcue the ſaid *J. H.* out of the cuſtody of the ſaid *S. L.* the

ſaid then ſheriff's bailiff aforeſaid, againſt the ſaid then ſheriff's will, and againſt the will and without the conſent of the ſaid *S. L.* and him the ſaid *J. H.* did permit to go at large where he pleaſed; and the ſaid *J. H.* did then and there, with force and arms, reſcue himſelf, and eſcaped out of the cuſtody of the ſaid *S. L.* the ſaid then ſheriff's ſaid bailiff, againſt the ſaid then ſheriff's will, and without the conſent of the ſaid *S. L.* againſt the peace of the ſaid lord the king; and afterwards and before the return of the ſaid writ, the ſaid *J. H.* was not found in the ſaid then ſheriff's bailiwic, and therefore the ſaid then ſheriff could not have the body of the ſaid *J. H.* before his ſaid majeſty's juſtices at the day and place in the ſaid writ mentioned, as by the ſaid writ the ſaid then ſheriff was commanded; under pretence of which falſe return of the ſaid writ, afterwards, *to wit*, on the 23d day of *October* in *Michaelmas* term in the 8th year of the reign of his ſaid majeſty, a writ of his ſaid majeſty iſſued out of his ſaid majeſty's court of common bench here, *to wit*, at *Weſtminſter* aforeſaid, according to the courſe and uſage of the ſaid court, directed to the now ſheriff of the ſaid county of *Middleſex*; by which writ the ſaid now ſheriff was commanded, that he ſhould not omit becauſe of any liberty in his ſaid county, but that he ſhould take the ſaid *E.* the ſaid wife of the ſaid *J. H.* and the ſaid *J.* if they were to be found in the bailiwic of the ſaid now ſheriff, and ſafely keep them, ſo that the ſaid now ſheriff

sheriff might have their bodies before his said majesty's justices here, *to wit*, at *Westminster* aforesaid, from the day of St. *Martin* in 15 days then next following, to answer to his said majesty of certain trespasses, rescues and contempts, certified by the said *R. W.* and *D. L.* late sheriff of the county of *Middlesex* aforesaid to his said majesty's justices at *W.* aforesaid, from the day of *Easter* in 15 days then last past, by virtue of which the said *J.* afterwards, and before the return of that writ, *to wit*, on the 11th day of *November* in the 8th year of the reign of his said majesty, at the said parish of *St. Giles's in the fields* in the county aforesaid, was attached, taken and imprisoned by *M P.* and *J. S.* the said now sheriff of the said county of *Middlesex*, and kept in prison by them there for a long time, *to wit*, from thenceforth, until the space of 33 hours then next following; and the said *J.* by reason of the premisses, was obliged to appear in the said court here, *to wit*, at *Westminster* aforesaid, at the return of the said writ, to answer to his said majesty for the said trespasses, rescues and contempts as aforesaid returned, according to the exigence of the said writ last above mentioned, and thereupon he the said *J. H.* with one *R. J.* and *W. L.* afterwards, *to wit*, on the 22d day of *November* in the term of St. *Michael* in the said 8th year of the reign of his said majesty, in his said majesty's court here, entered into a recognizance in the said court here, for the personal appearance of the said *J. H.* from the day of St. *Martin* in 15 days

 then

then next following, to anſwer all ſuch matters as ſhould be then and there objected againſt the ſaid *J. H.* and eſpecially for his contempt on the reſcous of the ſaid *J. H.* returned by the ſaid *R. W.* and *D. L.* the ſaid late ſheriff of *Middleſex* aforeſaid, and ſo from day to day till the ſaid *J. H.* ſhould be diſcharged by the ſaid court, and not depart the ſaid court without leave of the ſame court; whereas the ſaid *J. H.* in fact ſaith, that he is in no wiſe guilty of the ſaid ſuppoſed reſcous and contempt lately returned againſt him as aforeſaid, by reaſon of which falſe return of the ſaid writ above-mentioned ſo made by the ſaid *R. W.* and *D. L.* then ſheriff as aforeſaid, the ſaid *J. H.* not only bore and ſuſtained a long impriſonment as aforeſaid, but he hath been put unto divers great coſts and expences, amounting in the whole to a great ſum, *to wit*, to the ſum of 40 *l.* to the damage of the ſaid *J. H.* 90 *l.* Thereof he bringeth, ſuit, &c.

Declaration in caſe for unſkilfully managing a ſhip, whereby ſhe ran againſt a lighter and damaged plt.'s goods therein.

London, *to wit*, *H. G.* late, &c. mariner, was attached to anſwer to *T. H.* in a plea of treſpaſs upon the caſe, and whereupon the ſaid *T.* by *G. N.* his attorney complaineth, that whereas the ſaid *T.* on the 28th day of *December* in the year of our Lord 1735, at *London* aforeſaid, was poſſeſſed of divers goods and merchandizes, *to wit*, of 1000 baſkets of *Denia* raiſins, of the value of 360*l.* then laden on board a certain lighter then being in the river *Thames*, and then moored at a certain key adjoining to the ſaid river

Thames

Thames at *London* aforesaid; and whereas the said *H.* upon the said 28th day of *December* in the said year of our Lord 1735, at *London* aforesaid, was possessed of and master of a certain ship or vessel called the *Mary*, then being in the said river *Thames* near the said key; yet the said *H.* not being ignorant of the premisses, but devising and maliciously intending to hurt and injure the said *T.* in this behalf, upon the same day and year abovementioned at *London* aforesaid, so ill, unskilfully and negligently managed, governed and directed his said ship or vessel, that for want of good care and management of the said *H.* of his said ship or vessel, the said ship or vessel of the said *H.* then and there pressed against the said lighter, and broke one of the sides of the said lighter, whereby the water then and there flowed into the said lighter so laden with the said raisins as aforesaid, and very much damaged and spoiled the said raisins so laden therein, whereby he saith he is prejudiced, and hath damage to the value of 100*l.* and thereof he bringeth suit, *&c.*

Declaration against an innkeeper for losing a horse of his guest.

Yorkshire, *to wit*, *W. J.* innkeeper of a common inn in *Cloughton* in the county aforesaid, was attached to answer *W. K.* of a plea of trespass upon the case; whereupon the said *W. K.* by *J. U.* his attorney complaineth, that whereas by the law and custom of *England*, innkeepers who keep common inns to entertain travellers passing along the country where such common inns are, and as guests

lodging in the ſame inns ſafely and ſecurely by night and day, are bound to keep, without any loſs or dimunition of their goods and chattels being within the ſaid inns, ſo that by default of ſuch innkeepers or of their ſervants no damage may in any wiſe happen to ſuch gueſts; and alſo whereas the ſaid *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1ſt day of *November* aforeſaid did hold and keep, and yet doth hold and keep a common inn in *C.* aforeſaid, in the county aforeſaid; and the ſaid *W. K.* the ſaid 7th day of *November* in the ſaid inn as a gueſt did lodge, the ſaid *W. K.* then and there in the ſaid inn having with him a certain mare of the ſaid *W. K.* of the price of 5*l.* yet certain mildoers unknown to the ſaid *W. K.* the ſaid 7th day of *November* at *C.* aforeſaid in the county aforeſaid, in default of due keeping of the ſaid *W. J.* and his ſervants, the mare of the ſaid *W. K.* then and there put and placed in the ſaid inn, under the cuſtody of the ſaid *W. J.* in the ſaid inn of the ſaid *W. J.* by the ſaid *W. K.* a gueſt of the ſaid *W. K.* in the ſaid inn, took and carried away, and her detained from the ſaid *W. K.* againſt the will of the ſaid *W. K.* for a long time, *to wit*, for the ſpace of one month, and then and there did her beat, bruiſe and lame, ſo that ſhe became of no value, and other injuries to him did, to the great damage of the ſaid *W. K.* and againſt the ſaid law and cuſtom. *And alſo whereas* by the law and cuſtom of *England*, all innkeepers

keepers, who keep common inns to entertain travellers paſſing along the country where ſuch inns are, and as gueſts lodging in ſuch inns, all their goods and chattels, and all the goods and chattels being in the lawful cuſtody of ſuch gueſts, being in the ſaid inns night and day, are bound to keep without loſs or diminution, ſo that for default of ſuch inn-keepers or their ſervants no damage may in any wiſe happen to ſuch gueſts, or to the goods and chattels which are in the lawful cuſtody of ſuch gueſts within the ſaid inns; and whereas the ſaid *W. J.* on, and long before the ſeventh day of *November* in the 9th year of the reign of the lord the now king, and on the firſt day of *November* aforeſaid in the ſame year, in his ſaid inn at *C.* aforeſaid in the county aforeſaid, in his ſaid inn did lodge the ſaid *W. K.* as his gueſt, the ſaid *W. K.* then and there having in his lawful cuſtody another mare of *H. H.* then and there being the proper mare of the ſaid *H. H.* of the price of 5 *l.* by the ſaid *H. H.* to the ſaid *W. K.* before that time there lent, ſafely to be redelivered to the ſaid *H. H.* yet certain miſdoers unknown to the ſaid *W. K.* the ſaid 7th day of *November* at *C.* aforeſaid in the county aforeſaid, in default of due keeping of the ſaid *W. J.* and his ſervants, the ſaid laſt mentioned mare then and there put and placed under the cuſtody of the ſaid *W. J.* in the ſaid inn of the ſaid *W. J.* by the ſaid *W. K.* a gueſt in the ſaid inn of the ſaid *W. J.* took and carried away, and her

there

there detained from the ſaid *W. K.* for a long time, *to wit*, the ſpace of 11 days, and her then and there beat, bruiſed and lamed, ſo that ſhe became of no value; by reaſon whereof the ſaid *W. K.* paid the ſaid *H. H.* a great ſum of money, *to wit*, 21 *s.* in ſatiſfaction of the injury done to the ſaid mare; and he the ſaid *W. J.* other injuries did to the ſaid *W. K.* to the great damage of the ſaid *W. K.* and againſt the ſaid law and cuſtom; whereupon the ſaid *W. K.* ſaith, that he is injured, and hath damage to the value of 10*l.* and thereof he bringeth ſuit, &c.

Declaration in treſpaſs for entering and hunting in a chaſe or warren, and killing game.

Cumberland, *to wit*, *F. T.* late, &c. was attached to anſwer *W. H.* in a plea wherefore he with force and arms entered into a free chaſe of the ſaid *W.* at *M.* in the county aforeſaid, and without his licence and conſent in the ſame did hunt, and did take, kill and carry away hares, conies, pheaſants and partridges; and alſo wherefore he with force and arms entered into the free warren of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did there hunt, and take, kill and carry away other hares, conies, pheaſants and partridges, and other injuries to him did, to the great damage of the ſaid *W.* and againſt the peace of our lord the king; and whereupon the ſaid *W.* by *T. B.* his attorney complaineth, that the aforeſaid *F.* on the —— day of —— in the —— year of the reign of his preſent majeſty, and on divers other days and times between that day and the 1ſt day of *March* in the —— year of the reign

reign of his ſaid majeſty, with force and arms, *&c.* entered into the free chaſe of the ſaid *W.* at *M.* aforeſaid, and without his licence and conſent did in the ſame hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheaſants, *to wit*, 20 pheaſants, and partridges, *to wit*, 20 partridges; and alſo that the ſaid *F.* on the ſaid ſeveral days and times aforeſaid, with force and arms, *&c.* entered into the free warren of the ſaid *W.* at *M* aforeſaid, and without his licence and conſent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheaſants, *to wit*, 20 other pheaſants, and partridges, *to wit*, 20 other partridges, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereupon the ſaid *W.* ſaith that he is prejudiced, and hath received damage to the value of 20*l.* and thereof he bringeth ſuit, *&c.*

Derbyſhire, *to wit*, *W. L.* late, *&c.* was * attached to anſwer *J. T.* of a plea of treſpaſs upon the caſe, *&c.* and whereupon the ſaid *J.* by *W. W.* his attorney complaineth, that

* Declaration in caſe for detaining plt.'s apprentice. Ld. Ch. Juſt. *Raymond* ſaid, that if a man knows that an apprentice ran away from his maſter, and he keeps and employs him, the proper remedy is to bring an action for ſo much money paid to the plaintiff's apprentice in wrong of the Plaintiff. 2 *Lev.* 63. *Sel. Caſ.* 292. *Barnard. K. B.* 312.

whereas

whereas *W.* the ſon of *W. M.* of, *&c.* by his certain indenture bearing date the——day of——in the year of our Lord——at—— aforeſaid, was juſtly and lawfully retained in the ſervice of him the ſaid *J.* after the manner of an apprentice, to be inſtructed in the art of a cutler, which the aforeſaid *J.* then uſed, until the end and term of nine years from hence next enſuing and fully to be complete and ended. And the ſame *W. M.* the ſon ſerved for the ſpace of three years and upwards next after the ſaid —— day of ——in the year aforeſaid, in the ſervice of him the ſaid *J.* in his art aforeſaid as an apprentice; nevertheleſs the aforeſaid *W. L.* not ignorant of the premiſſes, but contriving craftily and ſubtilly to deceive and defraud him the ſaid *J.* of the ſervice of his ſaid apprentice, and of all profit, advantage and gain, which he the ſaid *J.* by reaſon of his apprentice aforeſaid ſhould and might have and gain, afterwards during the ſaid term of nine years, *to wit*, on the firſt day of *July* in the year of our Lord——at———aforeſaid in the ſaid county, knowing * the aforeſaid *W. M.* the ſon to be the apprentice of him the ſaid *J.* did wrongfully intice and procure him the ſaid *W. M.* the ſon to depart from the ſaid ſervice of him the ſaid *J.* which ſaid apprentice of the ſaid *J.* afterwards, *to wit*, the ſame day and year, by

* In an action for inticing away an apprentice, it muſt be proved, that the defendant knew he was the plaintiff's apprentice. *Sel. Caſ* 292. *pl.* 223. *Barnard. K B.* 312.

reaſon

reaſon of the ſaid inticements and procurements of the ſaid *W. L.* without any reaſonable or probable cauſe whatſoever left the ſervice of the ſaid *J.* his maſter, and abſented himſelf from his ſaid ſervice for a long time, *to wit*, for a month then next following, and the ſaid *W. L.* injuriouſly detained and kept him the ſaid *W. M.* the ſon from his ſervice aforeſaid during that time, againſt the will of the ſaid *J.* *to wit*, at —— aforeſaid, whereby the ſaid *J.* for all that time loſt the ſervice of his apprentice aforeſaid; *And whereas* the ſaid *W. M.* the ſon, afterwards, and during his ſaid apprenticeſhip, *to wit*, on the 2d day of *Auguſt* in the year of our Lord —— without any reaſonable cauſe or juſt pretence abſented himſelf from the ſervice of his ſaid maſter, *to wit*, at —— aforeſaid; nevertheleſs the ſaid *W. L.* well knowing the premiſſes, but contriving and intending further to injure the ſaid *J.* and to deprive him of the further uſe, ſervice and benefit of his ſaid apprentice *W. M.* the ſon, afterwards, *to wit*, on the ſaid 2d day of *Auguſt* in the year of our Lord —— aforeſaid, at —— againſt the will of the ſaid *J.* injuriouſly received the ſaid *W. M.* the apprentice into his ſervice, and detained and kept him from the ſervice of the ſaid *J.* his maſter for a long time, *to wit*, from thenceforth until the 1ſt day of *January* then next following; whereby the ſaid *J.* for all that time loſt the ſervice of his ſaid apprentice, to the damage of the ſaid *J.* of 40*l.* And thereof he bringeth ſuit, *&c.*

Here-

Declaration for taking and detaining plt.'s wife.

Herefordshire, *to wit*, *R. S.* was attached to answer *W. B.* gentleman of a plea, wherefore he took *S.* the wife of the said *W.* and keepeth her taken, *&c.* and whereupon the said *W.* by *J. C.* his attorney complaineth, that the said *R.* on the first day of *June* in the year of our Lord 1734, at the parish of *Bodenham* in the county aforesaid, took the said *S.* the wife of the said *W.* and keepeth her yet taken, whereby he saith that he is prejudiced, and damnified to the value of 500*l.* and thereof he bringeth suit, *&c.*

Declaration for carrying away plaintiff's wife, goods and chattels.

Suffolk, *to wit*, *M. W.* late, *&c.* malster, was attached to answer to *S. F.* gent. in a plea, wherefore with force and arms he took and carried away *T.* the wife of the said *S.* together with the goods and chattels of the said *S.* of the value of 500*l.* pounds at *Stowmarket* aforesaid, and detained the said *T.* the said wife of the said *S.* there from the said *S.* a long time, whereby the said *S.* lost the aid, comfort, fellowship, service and assistance of his said wife, and detained for a long time the said goods and chattels, and doth still detain the same, and did other wrongs to the said *S.* to the great damage of the said *S.* and against the peace of his present majesty, *&c.* And whereupon the said *S.* by *T. K.* his attorney complaineth, that the said *M.* on the 15th day of *May* in the year of our Lord 1733, at *S.* aforesaid in the county aforesaid, with force and arms, *&c.* took and carried away the said *T.* then and now

now the wife of the ſaid *S.* together with the goods and chattels of the ſaid *S.* *to wit*, a gold watch, a watch-chain and picture ſet in gold, one pair of ear-rings of gold ſet with diamonds, two other gold rings, four gowns, four petticoats, one cloth cloak, one velvet hood, 20 holland ſhifts, two head-dreſſes of lace, and two other head-dreſſes of cambrick and lace, of the value of 200 *l.* found at *S.* aforeſaid; and detained the ſaid *T.* the ſaid wife of the ſaid *S.* there from the ſaid *S.* a long time, *to wit*, from the ſaid 15th day of *May* in the ſaid year of our Lord 1733, until the 18th day of *October* in the year of our Lord 1735, whereby the ſaid *S.* during all that time loſt the aid, comfort, fellowſhip, ſervice and aſſiſtance of his ſaid wife; and alſo during all the time aforeſaid detained the ſaid goods and chattels, and doth ſtill detain the ſame, and did other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* whereby the ſaid *S.* ſaith that he is injured, and hath damage to the value of 2000*l.* and thereof he bringeth ſuit, *&c.*

Devon, *to wit*, *G. F.* late, *&c.* was attached to anſwer *E. F.* of a plea, wherefore with force and arms he made an aſſault upon *M.* the wife of the ſaid *E.* at *K.* in the ſaid county, and her the ſaid *M.* debauched, abuſed, carnally knew and got with child, whereby the ſaid *E.* for a long time loſt the comfort and affection, and alſo the counſel,

counſel, aſſiſtance and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace of our lord the king, &c. And whereupon the ſaid *E.* by *T. W.* his attorney complaineth, that the ſaid *G.* upon the 11th day of *November*, 1732, and at diverſe other days and times between that day and the 4th day of *October* in the year of our Lord 1733, with force and arms made an aſſault upon *M.* then the wife of the ſaid *E.* at *K.* aforeſaid in the county aforeſaid, and her the ſaid *M.* then and there debauched, abuſed, carnally knew and got her with child, whereby the ſaid *E.* for all the time aforeſaid loſt the comfort and affection, and alſo the counſel and aſſiſtance, and ſervice of his ſaid wife in his domeſtic affairs, and did him other wrongs, to the great damage of the ſaid *E.* and againſt the peace, &c. Whereupon he ſaith he is injured, and hath damage to the value of 1000*l.* and thereof he bringeth ſuit, &c. *

Declaration in caſe for dilapidations in not repairing chancel, &c.

Glouceſterſhire, *to wit*, *P. L.* late, &c. late rector of the pariſh church of *B.* in the ſaid county of *G.* was attached to anſwer to *W. A.* clerk, now rector of that church, in a plea of treſpaſs on the caſe, &c. and where upon the ſaid *W. A.* by *T. M.* his attorney complaineth, that whereas all and ſingular rectors of churches within that part of his

* See more precedents in ſecond volume.

majeſty's

majesty's kingdom of *Great Britain* called *England*, for the time being, ought by law well and sufficiently to repair, support and sustain the chancels of their churches, and the walls and fences of their church-yards, and all and singular the houses, edifices, buildings and structures of and belonging to their rectories, and the walls and fences of their glebe lands thereof, and relinquish, yield up and leave the same without any dilapidations, or want of reparation whatsoever, to their successors, rectors of such churches; and in default thereof are bound and ought to pay and satisfy their successors the full and true value of such dilapidations and want of reparations. *And whereas* the said *P.* was heretofore lawfully instituted, and inducted into the said rectory and parish church of *B.* and on the first day of *November* in the year of our Lord 1733, was the lawful rector thereof, and in right of the said rectory was seised of a mansion-house, called the parsonage-house in the said parish of *B.* with the barns, stables, out-houses, edifices, buildings, yards, courts, gardens and appurtenances thereunto belonging, and also of several pieces or parcels of glebe land parcel of the said rectory, and so continued until such time as herein after is mentioned, and afterwards, *to wit*, on the 25th day of the said month of *November* in the said year of our Lord 1733, freely resigned the said rectory and parish church into the hands of *E.* late lord bishop of *G.* deceased, then or-

dinary of that place, and thereupon the ſaid church being vacant by means of ſuch reſignation; and the ſaid *W. A.* afterwards, *to wit*, the 18th day of *December* in the year aforeſaid, was upon ſuch vacancy duly preſented to the ſaid church, and admitted, inſtituted and inducted into the ſame, and became, and hath continued, and now is the lawful rector of the ſaid church, and the next ſucceſſor of the ſaid *P.* and the ſaid *W. A.* in fact ſaith, that at the ſaid time of the reſignation of the ſaid rectory and pariſh church by the ſaid *P.* the chancel of the ſaid pariſh church, and the walls and fences of the church-yards thereof, and the ſaid manſion or dwelling-houſe called the parſonage-houſe, part of and belonging to the ſaid rectory, the brew-houſe thereto adjoining, the barn, the ſtables, the coach-houſe, cart-houſe, the granary, the neceſſary-houſe, the chicken-houſe, and other out-houſes, edifices and buildings belonging to the ſaid manſion-houſe, the mound-walls round the garden and courts likewiſe belonging to the ſame houſe, the ſtone ſteps in the ſaid garden and the rails on each ſide of ſuch ſteps, and alſo the walls and fences of the glebe lands, part alſo of the ſaid rectory, were very ruinous, and greatly dilapidated, and in decay for want of repairs, and were ſo left by the ſaid *P.* when he reſigned the ſaid rectory and church as aforeſaid, *to wit*, on the 25th day of *November* in the ſaid year of our Lord 1733. And the ſaid *W. A.* further ſaith, that the ſum of money neceſſary

to

to be expended and laid out for the neceſſary repairs of the ſaid premiſſes amounteth to, and at the time of the ſaid reſignation of the ſaid rectory and pariſh church by the ſaid *P.* amounted to 200*l.* of lawful money of *Great-Britain*, of which the ſaid *P.* afterwards, *to wit*, on the 20th day of the ſaid month of *December* in the ſaid year 1733, at *B.* aforeſaid, had notice: *Nevertheleſs* the ſaid *P.* intending to defraud the ſaid *W.* in this behalf, the ſaid ſum of 200*l.* or any part thereof, or any other ſum of money ſufficient for the neceſſary reparation of the ſaid premiſſes, ſo left by the ſaid *P.* dilapidated, and in ſuch a ruinous condition for want of repairs as aforeſaid, to the ſaid *W.* hath not paid or ſatisfied, although the ſaid *P.* was afterwards, *to wit*, the ſaid 20th day of *December* in the year laſt above mentioned, at the ſaid pariſh of *B.* in the ſaid county of *G.* requeſted by the ſaid *W.* ſo to do; but the ſaid *P.* hath hitherto refuſed, and ſtill refuſeth to pay or ſatisfy the ſame, or any ſum of money whatſoever to the ſaid *W.* for ſuch want of repairs and dilapidations as aforeſaid, to the damage of the ſaid *W.* of 200*l.* and thereof he bringeth ſuit, *&c.*

Declaration in prohibition.

Northamptonſhire, *to wit*, *T. K.* late, *&c.* was attached to anſwer to *R. B.* who proſecuteth in this behalf as well for the king as for himſelf in a plea, wherefore he the ſaid *T.* hath followed a plea againſt the ſaid *R.* in the ſpiritual court againſt the king's prohibition, *&c.* and whereupon the ſaid *R.*

who as well, *&c.* by *T. S.* his attorney complaineth, that whereas the pariſh of *Towceſter* aforeſaid is, and from the time beyond the memory of man was an ancient pariſh, within which pariſh for all that time there was and is an ancient pariſh church and whereas he the ſaid *R. B.* now is, and for divers years laſt paſt was ſeiſed in his demeſne as of fee of and in an ancient meſſuage, with the appurtenances, in the pariſh of *Towceſter* aforeſaid, now or late in the tenure or occupation of *L. R.* and he the ſaid *R. B.* and all thoſe whoſe eſtates he had and hath of and in the ſaid meſſuage, with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church, which ſeat or form hath been lately taken in and made parcel of a pew in the ſaid church, and therefore have had and uſed for themſelves and family inhabiting in the ſaid meſſuage the ſole and ſeparate uſe of the ſaid ſeat or form, for the hearing and attending of divine ſervice in the ſaid church. *And whereas* all pleas and ſuits of and concerning cuſtoms and preſcriptions within this realm, and the cognizance of ſuch pleas and ſuits, ſpecially belong and appertain to his majeſty and his royal crown, and not to the court Chriſtian, and by the common law of the land of this kingdom of *England*, and not by the eccleſiaſtical laws or cenſures, ought to be tried, determined and diſcuſſed, and always hitherto were wont and ought: Nevertheleſs the ſaid *T. K.* well knowing the premiſſes, but con-

triving

triving unjuſtly to grieve the ſaid *R. B.* and to diſherit his ſaid majeſty and his royal crown, and to bring the cognizance of a plea which ſpecially belongs to his preſent majeſty and his royal crown to another ſort of trial in the court Chriſtian before the venerable *G. R.* doctor of laws, lawfully deputed vicar general in ſpirituals, and principal official of the reverend father in Chriſt and lord *R.* by divine permiſſion biſhop of *Peterborough*, or his ſurrogate, hath impeached and controverted his ſuit, the right, title and poſſeſſion of the ſaid *R. B.* to the ſaid ſeat or form, now parcel of the ſaid pew; and although the ſaid *R. B.* hath pleaded and alledged all and ſingular the matters above by him here ſuggeſted in the ſaid court Chriſtian before the ſaid ſpiritual judge, in maintenance of his ſaid right and poſſeſſion of the ſaid ſeat or form in the ſaid pew, and offered to prove the ſame by inevitable teſtimony; *Yet* the ſaid ſpiritual judge wholly refuſed to admit the ſaid allegation and proof, and the ſaid *T. K.* endeavoureth and daily contriveth to cauſe the ſaid *R. B.* to be condemned in the premiſſes in the ſaid court Chriſtian, before the ſaid ſpiritual judge, in contempt of his ſaid preſent majeſty, and to the manifeſt damage, prejudice, impoveriſhment and grievance of the ſaid *R. B.* and againſt the common law of *England*. And although he the ſaid *R.* afterwards, *to wit*, on the 20th day of *January* in the year of our Lord 1733, at the pariſh aforeſaid, delivered to the ſaid *T. K.* the king's writ of

prohibition to the contrary thereof; Nevertheless the said *T. K.* hath not ceased to follow his said suit in the said spiritual court, but hath since that time prosecuted and still prosecuteth his said suit there, notwithstanding the said writ of prohibition so delivered to him as aforesaid, in contempt of his said majesty, and to the great damage and grievance of the said *R.* and against the said prohibition; whereupon the said *R.* who as well, &c. saith that he is injured, and hath damage to the value of 40*l.* and thereof he as well for the king as for himself bringeth suit, &c.

Declaration in debt for rent reserved by indentures, at the suit of the heir.

Westmoreland, *A. B.* late, &c. was summoned to answer *C. D.* son and heir at law of *E. D.* deceased, of a plea, that he render to him 14*l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from him, &c and thereupon the said *C.* by *W. R.* his attorney saith, that whereas the said *E.* in his life-time, *to wit*, on the 24th day of *January* in the year of our Lord 1726, at *Kirby K.* aforesaid, by a certain indenture then and there made between the said *E.* by the name of —— (*as in the lease*) of the one part, and the said *A.* by the name of —— (*as in the lease*) of the other, the other part of which indenture, sealed with the seal of the said *A.* the said *C.* bringeth here into court, the date whereof is the same day and year, demised, leased, set, and to farm let unto the said *A.* his executors, administrators and assigns, all his the said

ſaid *E.'s* burgage houſe, meſſuage and tenement, ſituate, ſtanding and being at or near *Strickland gate end (ſo recite the parcels as in the leaſe)* to have and to hold the ſaid burgage houſe, meſſuage and tenement, barn, *&c.* and all and ſingular other the premiſſes by the ſaid indenture demiſed, with the appurtenances (except before excepted) unto the ſaid *A.* his executors, adminiſtrators and aſſigns, from the 2d day of *February* next enſuing the day of the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term, unto the ſaid *E.* his heirs and aſſigns, the yearly rent or ſum of 14*l.* of lawful money of *Great Britain*, at two days or times of payment in the year, that is to ſay, at *Whitſuntide* and St. *Martin* the biſhop in winter, by even and equal portions; the firſt payment to begin and be made at *Whitſuntide* then next enſuing, as by the ſaid indenture may more fully appear; by virtue of which ſaid demiſe the ſaid *A.* entered into the ſaid demiſed premiſſes with the appurtenances (except before excepted) and was poſſeſſed thereof for the term thereof demiſed as aforeſaid, the reverſion thereof, with the appurtenances, belonging to the ſaid *E.* his heirs and aſſigns; and being ſo poſſeſſed, the reverſion thereof belonging as aforeſaid to the ſaid *E.* afterwards, *to wit*, the firſt day of *April* in the year of our Lord 1733, at *K.* aforeſaid

 died

died seised of such his estate of and in the said reversion, at whose death the said reversion, with the appurtenances, descended to the said *C.* as son and heir of the said *E.* whereby the said *E.* became, and was seised of and in the said reversion with the appurtenances; and being so seised, and the said *A.* being so possessed of the said demised premisses with the appurtenances, 14*l.* of the rent aforesaid, for one year ending at the feast of St *Martin* the bishop in the winter, in the year of our Lord 1734. to the said *C.* from the said *A.* became in arrear, and still remain unpaid, whereby an action hath accrued to the said *C.* to demand and have of the said *A.* the said 14*l.* yet the said *A.* (although often requested) hath not yet paid the said 14*l.* or any part thereof, to the said *C.* but to pay the same to him hitherto altogether hath refused, and still doth refuse, to the damage of the said *C.* 10*l.* and thereof he bringeth suit, *&c.*

Declaration in debt for rent reserved by indenture against the assignee of the lessee.

Middlesex, *to wit*, *J. L.* late of *Tottenham* in the county of *Middlesex*, esq; assignee of *J. S.* esq; otherwise lately called *J. S.* senior, of *London*, esq; was summoned to answer *G. B.* esq; in a plea, that he render to him 6*l.* 12*s.* 6*d.* which he oweth to him, and unjustly detaineth, *&c.* and whereupon the said *G.* by *E. B.* his attorney saith, that whereas by a certain indenture made at *Tottenham* aforesaid, on the 17th day of *May* in the year 1716, between the said *G.* by the name of *G. B.* of *Leatherhead* in the county

county of *Surrey*, esq; of the one part, and the said *J. S.* by the name of *J. S.* senior, of *London*, esq; of the other part, the counterpart of which indenture sealed with the seal of the said *J.* the said *G.* bringeth here into court, bearing date the same day and year, for the consideration therein mentioned he the said *G.* did demise, grant and to farm let unto the said *J. S.* all that mansion-house, messuage, tenement, wash-houses, stables, out-houses, yards, gardens, orchards, fish-pond or canal, with the appurtenances, which were then lately in the tenure or occupation of *R. C.* his under tenants or assigns; and which said mansion-house and premisses abutted eastward on a field called the *Royal Field*, belonging to *T. M.* of *London*, goldsmith, westward on *Tottenham* high road, northward on a barn and orchard belonging to the said *G. B.* in the tenure or occupation of the said *W. B.* and southward on a garden belonging to the said *G. B.* in the tenure or occupation of the said *W. B.* and also that little messuage and tenement built upon the wall belonging to the said mansion-house, fronting also upon the high road of *Tottenham* aforesaid, then also in the tenure or occupation of the said *W. B.* his under-tenants or assigns, together with all ways, easements, watercourses, commodities and appurtenances whatsoever to the said mansion-house, messuages or tenements belonging or in any wise appertaining; all which said premisses are situate and being in the parish of *Tottenham High Cross* in the county

county of *Middlesex*; to have and to hold the ſaid manſion-houſe, meſſuages or tenements, waſh-houſes, ſtables, out-houſes, yards, gardens, orchards, fiſh-pond or canal, and all other the premiſſes, with their and every of their appurtenances above by the ſaid indenture demiſed and granted unto the ſaid *J.* his executors, adminiſtrators and aſſigns, from the feaſt-day of the Annunciation of the bleſſed virgin *Mary* laſt paſt before the date of the ſaid indenture, for and during and unto the full end and term of 21 years from thence next enſuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the ſaid term unto the ſaid *G.* his heirs and aſſigns, the yearly rent or ſum of 26*l.* 10*s.* of lawful money of *Great Britain*, on the four feaſt-days or terms of payment in the year moſt uſual, that is to ſay, at the feaſt of the Nativity of St. *John* the baptiſt, St. *Michael* the archangel, the birth of our Lord Chriſt, and the Annunciation of the bleſſed virgin *Mary*, by even and equal portions; the firſt payment thereof to begin and to be made upon the feaſt-day of St. *John* the baptiſt next enſuing the date of the ſaid indenture, as by the ſaid indenture more fully appeareth; by virtue of which demiſe the ſaid *J.* entered into the ſaid demiſed premiſſes with the appurtenances, and was thereof poſſeſſed; and being ſo poſſeſſed thereof, afterwards, *to wit*, *on the 1ſt day of *April* in the year of our Lord 1734, all the ſaid eſtate, right, title, intereſt and term of years of the ſaid *J.* then

to come and unexpired, of and in the ſaid demiſed premiſſes with the appurtenances, by an aſſignment came to the ſaid *J. L.* by virtue of which aſſignment the ſaid *J. L.* entered into the ſaid demiſed premiſſes with the appurtenances, and was poſſeſſed thereof until the expiration of the ſaid term of 21 years, *to wit*, until and upon the feaſt of the Annunciation of the bleſſed virgin *Mary* in the year of our Lord 1737, and 6*l.* 12*s.* 6*d.* of the rent aforeſaid, for the laſt quarter of a year of the ſaid term on that feaſt became due and in arrear from the ſaid *J. L.* to the ſaid *G.* by reaſon of which an action accrued to the ſaid *G.* to demand and have of the ſaid *J. L.* the ſaid 6*l.* 12*s.* 6*d.* Nevertheleſs the ſaid *J. L.* (although often requeſted) hath not rendered to the ſaid *G.* the ſaid 6*l.* 12*s.* 6*d.* or any part thereof; but hath hitherto wholly denied, and ſtill doth deny to render the ſame to the ſaid *G.* whereby the ſaid *G.* ſaith that he is injured, and hath damage to the value of 40*s.* and thereof he bringeth ſuit, &c.

Plea, Nothing in arrear.

And the ſaid *J. L.* by *J. D.* his attorney cometh and defendeth the force and injury, when, &c. and as to the ſum of 6*l.* 12*s.* 6*d.* which the ſaid *G.* above by his ſaid declaration ſuppoſeth to have been become due and in arrear for the rent of the ſaid premiſſes from the ſaid *J. L.* to the ſaid *G.* upon the feaſt of the Annunciation of the bleſſed virgin *Mary* in the year of our Lord 1737, for the laſt quarter of a year of the ſaid term on that feaſt in the ſaid declaration mentioned, the

the said *J. L* saith that no part thereof is due and in arrear to the said *G.* as the said *G.* by his said declaration above supposeth; and of this he putteth himself upon the country, &c.

Decl. against a hundred on the statute of hue and cry. Stat. of Winchester, 13 Edw. 1 st. 2. c. 1.

Staffordshire, *to wit*, The inhabitants of the hundred of *Pirewill* in the county of *Stafford* were attached to answer as well to our sovereign lord the now king as to *H. W.* who as well for the same lord the king as for himself in this behalf sueth of a plea, wherefore whereas in a certain statute made in the parliament of the sovereign lord *Edward* I. late king of *England*, held at *Westminster* in the 13th year of his reign, (amongst other things) it is ordained, Forasmuch as from day to day robberies, murders, burnings of houses and theft were then more often used than they had been theretofore, and felons could not be attainted by the oaths of jurors, who had rather suffer strangers to be robbed, and to pass without pain, than to indict the offenders, great part of whom were people of the same country; or at least if the offenders were of another country, the receivers were of places near, and they did the same because an oath was not given unto jurors of the same country where such felonies were done; and as to the restitution of damages before that time, no pain had been limited for their concealment and laches; the said lord the late king, for to abate the power of felons, had established a pain in that case, so that from thenceforth, for fear of the pain more

more than for fear of any oath, they ſhould not ſpare any, nor conceal any felonies. And the ſaid lord the late king did command, that cries ſhould be ſolemnly made in all counties, hundreds, markets, fairs, and all other places where great reſort of people was, ſo that none ſhould excuſe himſelf by ignorance, that from thenceforе every country ſhould be ſo well kept, that immediately, upon ſuch robberies and felonies committed, freſh ſuit ſhould be made from town to town, and from country to country; likewiſe when need is required, inqueſt ſhould be made in towns by him that was lord of the town, and after in the hundred and in the franchiſe, and in the county, and ſometimes in two or three or four counties, in caſe when felonies ſhould be committed, in the marches of ſhires, ſo that the offenders might be attainted; and if the country would not anſwer for the bodies of ſuch manner of offenders, the pain ſhould be ſuch, that every country, (that is to ſay) the people dwelling in the country, ſhould be anſwerable for the robberies done, and all the damages, ſo that the whole hundred where the robberies ſhould be done, with the franchiſes, being within the precinct of the ſame hundre[illegible]ould be anſwerable for the robberies ſo[illegible]e; and if the robbery ſhould be done in the diviſion of two hundreds, both the hundreds, and the franchiſes within them, ſhould be anſwerable; and after that the felony or robbery was done, the countries ſhould have no longer ſpace than 40 days, within which it

it ſhould behove them to agree for the robbery or offence, or elſe that they ſhould anſwer for the bodies of the offenders, as is plainly contained in the aforeſaid ſtatute; *And for that whereas* two certain robbers to the ſaid *H. W.* unknown, on the 5th day of *May* in the 10th year of the reign of the ſaid lord the now king, in the king's high way within the hundred of *Pirebill* aforeſaid in the ſaid county of *Stafford*, to wit, at a certain place near *Weſton*, commonly called *Wodden Lane*, between *Weſton* and *Amerton* in the pariſh of *Weſton* in the ſaid county of *Stafford*, within the hundred of *Pirebill* aforeſaid in the county of *Stafford* aforeſaid, with force and arms upon him the ſaid *Henry* made an aſſault, and 25 *l.* in money of lawful money of *Great Britain*, of the proper monies of him the ſaid *H. W.* and alſo a leather purſe value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the ſaid *H. W.* then and there found, of and from him the ſaid *H. W.* did feloniouſly take and rob and carry away, againſt the ſaid peace of our ſaid lord the now king; and the ſaid *H. W.* immediately after the felony and robbery aforeſaid done at *Wodden Lane* aforeſaid in the ſaid pariſh of *Weſton* within the hundred of *Pirebill* aforeſaid in the county aforeſaid, being near the ſaid place where the ſame felony and robbery ſo as aforeſaid was committed, did make hue and cry of the aforeſaid felony and robbery upon him made, and then and there did give notice to the inhabitants of the pa-

Stat. 27 Eliz. c. 13.

riſh of *Weſton* aforeſaid of the ſame felony and robbery; and did alſo, with as much convenient ſpeed as might be after the aforeſaid robbery on him committed as aforeſaid, give notice thereof to *T. W.* then a conſtable of the ſaid pariſh of *Weſton* aforeſaid in the ſaid hundred of *Pirehill*, being near unto the place where the ſaid robbery was committed as aforeſaid, and deſcribe in the aforeſaid notice to the aforeſaid conſtable, ſo far as the nature and circumſtances of the caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery; and did alſo, within the ſpace of 20 days next after the aforeſaid robbery committed, cauſe public notice to be given thereof in the *London Gazette*, and did therein likewiſe deſcribe, ſo far as the nature and circumſtances of the ſaid caſe did admit, the ſaid felons, and the time and place of the aforeſaid robbery, together with the ſaid money, goods and effects whereof he the ſaid *H.* was robbed as aforeſaid, and afterwards did, and before the ſuing forth of the original writ of him the ſaid *H.* to wit, on the 15th of *October* in the 11th year of the reign of the ſaid lord the now king, he the ſaid *H.* went before the ſheriff of the county of *Stafford* aforeſaid, and did then before the ſaid ſheriff enter into a bond to *T. B.* and *J. G.* then being high conſtables of the hundred of *Pirebill* aforeſaid, in the penal ſum of 100*l.* with two ſufficient ſureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the ſame place, carpenter, approved by the ſaid ſheriff,

riff, with condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirehill* aforesaid, on account of the aforesaid robbery; or in case that judgment should be given against him the said *H. W.* on demurrer, or that verdict should be given against him therein, according to the form and directions of the statute in such case lately made and provided; and after the felony and robbery aforesaid done, and within 20 days next before the day of the suing forth of the said original writ of him the said *H. W.* the said *H. W.* before *T. W.* esq; then one of the justices of our said lord the now king assigned to keep the peace of our said lord the now king, in and for the county of *Stafford* aforesaid, then inhabiting at *Haywood* in the parish of *Colwick*, within the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, was examined upon his corporal oath, according to the form of the statute in that case made and provided, and the said *H. W.* upon his said oath before the said *T. W.* then and there said, that he did not know the parties who had committed the aforesaid robbery, or either of them; and after the felony and robbery upon him made as aforesaid, and after the said public notice given of the aforesaid robbery in the aforesaid *London Gazette*, 40 days of the suing forth of the

Stat. 8 Geo. 2. c. 16.

Stat. 27 Eliz. c. 13. s. 11.

the ſaid original writ of the ſaid *H.* were paſt; yet the ſaid inhabitants of the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, have not hitherto made to the ſaid *H. W.* ſatisfaction for the robbery and damages aforeſaid, nor the bodies of the felons and malefactors aforeſaid, nor the bodies of either of them, have taken, nor for the bodies of them, nor for the bodies of either of them hitherto have anſwered, but the ſame felons and malefactors have permitted to eſcape, in contempt of the ſaid lord the now king, and to the great damage of him the ſaid *H. W.* and againſt the ſaid form of the ſtatute aforeſaid in the aforeſaid 13th year of the reign of the ſaid late lord king *Edward* I. in ſuch caſe made and provided; and whereupon the ſaid *H.* who as well for the ſaid lord the now king as for himſelf in this behalf ſues, by *R. D.* his attorney complaineth, that certain robbers, *to wit*, two men, to the ſame *H. W.* unknown, on the aforeſaid 5th day of *May* in the aforeſaid 10th year of the reign of the ſaid lord the now king, in the king's high way within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, *to wit*, at a certain place near *Weſton* aforeſaid, commonly called *Wodden Lane*, between *Weſton* and *Amerton* in the pariſh of *Weſton* in the ſaid county of *Stafford*, within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, with force and arms, *to wit*, with piſtols, ſwords, ſtaves and knives, in and upon him the aforeſaid *H.* did make an aſſault, and 25 *l.*

in money of lawful money of *Great Britain*, of the proper monies of him the said *H. W.* and also a leather purse value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the said *H. W.* then and there found, of and from the said *H.* did feloniously take and rob and carry away, against the peace of our said lord the now king, *&c.* And the said *H.* immediately after the felony and robbery aforesaid done, *to wit*, on the said 5th day of *May* in the 10th year of the reign of the said lord the now king aforesaid, at *Wodden Lane* aforesaid in the said parish of *Weston* within the hundred of *Pirehill* aforesaid in the county aforesaid, which said place called *Wodden Lane* is, and then was near the said place where the said felony and robbery so as aforesaid was committed, did make hue and cry of the felony and robbery aforesaid upon him made, and then and there give notice to the inhabitants of the said parish of *Weston* of the same felony and robbery; and did also, with so much convenient speed as might be after the aforesaid robbery on him committed as aforesaid, that is to say, on the said 6th day of *May* in the 10th year aforesaid, give notice thereof to *T. W.* then a constable of the said parish of *Weston* aforesaid in the said hundred of *Pirehill*, being near unto the place where the said robbery was committed as aforesaid; and did describe in the aforesaid notice to the aforesaid constable, so far as the nature and circumstances of the case did admit, the said felons and the time and place

of the aforesaid robbery; and did also, within the space of 20 days next after the aforesaid robbery committed, cause public notice to be given thereof in the *London Gazette*, and did therein likewise describe, so far as the nature and circumstances of the said case did admit, the said felons and the time and place of the aforesaid robbery, together with the said money, goods and effects whereof he the said *H.* was robbed as aforesaid, and afterwards, and before the suing forth of the original writ of him the said *H. to wit*, on the 15th day of *October* in the 11th year of the reign of the said lord the now king abovesaid, he the said *H.* went before the sheriff of the county of *Stafford* aforesaid, and did then before the same sheriff enter into a bond unto *T. B.* and *J. C.* high constables of the hundred of *Pirehill* aforesaid in the penal sum of 100*l.* with two sufficient sureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the same place, carpenter, approved by the said sheriff, with the condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirehill* aforesaid on account of the aforesaid robbery, or in case that judgment should be given against him the said *H. W.* on demurrer, or that a verdict should be given against him therein, according to the form and di-

rection of the ſtatute in ſuch caſe lately made and provided; and after the felony and robbery aforeſaid done, and within 20 days next before the day of the ſuing forth of the original writ of him the ſaid *H. W.* *to wit*, on the aforeſaid 15th day of *October* in the 11th year of the reign of our ſaid lord the now king abovesaid, he the ſaid *H. W.* before the ſaid *T. W.* eſq; then one of the juſtices of the ſaid lord the now king, aſſigned to keep the peace of the ſame lord the now king in and for the county of *Stafford* aforeſaid, then inhabiting at *Haywood* in the pariſh of *Colwick* within the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid, was examined upon his corporal oath, according to the form of the ſtatute in that caſe made and provided; and the ſaid *W. H.* upon his ſaid oath then and there before the ſaid *T. W.* ſaid that he did not know the parties who had committed the aforeſaid robbery, or either of them, and after the felony and robbery upon him made as aforeſaid, and after the ſaid public notice given of the aforeſaid robbery in the aforeſaid *London Gazette*, 40 days of the day of ſuing forth of the ſaid original writ of the ſaid *H.* were paſt; *Yet* the ſaid inhabitants of the hundred of *Pirehill* aforeſaid in the county of *Stafford* aforeſaid have not hitherto made to the ſaid *H. W.* ſatiſfaction for the robbery and damages aforeſaid, nor the bodies of the ſaid felons and malefactors aforeſaid, nor the bodies of either of them have taken, nor for the bodies of them, nor for the bodies of either of them

hitherto

hitherto have anſwered, but the ſame felons and malefactors have permitted to eſcape, in contempt of the ſaid lord the now king, and to the great damage of him the ſaid *H. W.* againſt the form of the ſtatute aforeſaid, in the aforeſaid 13th year of the reign of the ſaid late lord king *Edward* the firſt in ſuch caſe made and provided; whereupon the ſaid *H. W* who as well for the ſaid lord the now king as for himſelf ſueth, ſaith that he is injured, and hath damage to the value of 40*l.* and thereof he bringeth ſuit, &c.

Vide ſtat. 22 Geo 2 c. 24. 46.

And the ſaid inhabitants of the hundred of *Pirehill* by *H. D* their attorney come and defend the force and injury, when, &c. and ſay, that they are no wiſe guilty of the premiſſes above laid to their charge, as the ſaid *H. W.* who as well, &c. above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *H. W.* who as well, &c. doth likewiſe the ſame: And thereupon the ſame *H. W.* ſaith, that the inhabitants in the hundred of *Pirehill* aforeſaid, where the ſaid robbery was committed, are parties defendants, againſt whom the ſaid *H. W.* who as well, &c. above in form aforeſaid complaineth, and for that cauſe craveth the writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe to come twelve, &c. of the vicinity of the hundred of *Offlow* in the county aforeſaid, which ſaid hundred of *Offlow* is the next hundred in the ſame county adjacent to the aforeſaid hundred of *Pirehill*, to try the iſſue aforeſaid above in form

Plea, Not guilty.

Iſſue.

Venire *of the next adjacent hundred.*

aforesaid joined: And because the said inhabitants in the aforesaid hundred of *Pitchill* do not deny this, it is granted to him; therefore the sheriff is commanded, that he cause to come here in eight days of the Purification of the blessed virgin *Mary* twelve, &c. of the vicinity of the hundred of *Oyow*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Debt. Qui tam *for keeping a greyhound and killing a hare not being qualified.*

Kent, *to wit*, *E. L.* late, &c. was summoned to answer to the poor of the said parish of *F.* in the county aforesaid, and to Sir *J. S.* baronet, who sueth in this behalf as well for himself as for the said poor of the said parish of *F.* aforesaid of a plea, that he render to the said poor and the said *J. S.* who sueth as aforesaid, 10*l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from them, &c. And thereupon the said Sir *J.* who sueth as aforesaid by *H. C.* his attorney saith, that the said *E.* on the 13th day of *March* in the year of our Lord 1736, at and in the parish of *F.* aforesaid did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such case made and provided, whereby, and by force of the statute in such case lately made and provided, an action hath accrued to the said poor of the parish aforesaid, and to the said Sir *J.* who sueth as aforesaid, to demand and

and have of the ſaid *E.* for his ſaid offence 5 *l.* parcel of the ſaid 10 *l.* and the ſaid Sir *J.* who ſueth as aforeſaid, further ſaith, that the ſaid *E.* on the 30th day of *March* in the year aforeſaid in the ſaid pariſh of *E.* in the county aforeſaid, did with a certain greyhound kill one hare, he the ſaid *E.* then not being a perſon qualified to kill game, againſt the form of the ſtatute in ſuch caſe lately made and provided, whereby, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the ſaid poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid laſt mentioned offence 5 *l.* reſidue of the ſaid 10 *l.* Yet the ſaid *E.* (although often requeſted) hath not yet paid the ſaid 10 *l.* or any part thereof, to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, or to either of them; but he to pay the ſame to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, hitherto wholly hath refuſed and ſtill doth refuſe to the ſaid Sir *J.* who ſueth as aforeſaid, his damage of 10 *l.* and thereof as well for the ſaid poor as for himſelf he bringeth ſuit, *&c.*

Plea, Nil debet.

And the ſaid *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury, when, *&c.* and ſaith that he doth not owe to the ſaid Sir *J.* who as well, *&c.* the ſaid ſum of 10 *l.* or any part thereof, in manner and form as the ſaid Sir *J.* who as well, *&c.* above thereof complaineth againſt him: And of this he putteth himſelf upon the

country; and the said Sir *J.* who sueth as aforesaid, doth likewise the same; therefore, *&c.*

Judgment for not entering issue.

And the said Sir *J. S.* although solemnly called came not, nor hath entered his said issue, nor hath further prosecuted his writ: Therefore he and his pledges of prosecution are thereupon amerced, *&c.* and the names of the pledges of the said Sir *J.* are, *&c.* and that the said *E. L.* depart without day, *&c.* It is also considered, that the said *E.* do recover against the aforesaid Sir *J.* his damages by reason of the premisses, to 3*l.* 16*s.* 8*d.* to the said *E.* by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

Declaration for shooting a greyhound.

Leicestershire, *to wit*, *H. R.* late, *&c.* was attached to answer *B. D.* in a plea, wherefore with force and arms a certain greyhound bitch, and a certain other bitch of the said *B.* of the price of 10*l.* at *M.* aforesaid in the county aforesaid, with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit*, five young whelps of the said greyhound bitch, and certain young whelps, *to wit*, five young whelps of the said other bitch, which died for want of the said bitches to suckle them, *to wit*, at *M.* aforesaid; and a certain other greyhound bitch, and a certain other bitch of the said *B.* lately found at *M.* aforesaid, of the price of

10*l.*

10*l.* he ſhot at, hit, ſtruck, ſmote and wounded, by means whereof the laſt mentioned two bitches afterwards at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the ſaid two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five other young whelps of the ſaid laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid; and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſovereign lord the king that now is, *&c.* And whereupon the ſaid *B.* by *J. B.* his attorney complaineth, that the ſaid *H.* on the 15th day of *January* in the year of our Lord 1736, with force and arms, *&c.* a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* then found at *M.* aforeſaid with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch; and certain young whelps, *to wit*, five young whelps of the other of the ſaid bitches, which afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died for want of the ſaid bitches to ſuckle them; and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* then found at *M.* aforeſaid of the price of 10*l.* ſhot at, hit, ſtruck, ſmote and wounded; by means whereof the laſt mentioned

tioned two bitches afterwards, *to wit*, the ſame day and year at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is, whereby the ſaid *B.* ſaith that he is injured and damnified, to the value of 10*l.* and thereof he bringeth ſuit, *&c.*

Plea. Defendant juſtifies as keeper of a park.

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury, when, *&c.* And as to the coming with force and arms, and the whole treſpaſs aforeſaid above ſuppoſed to be done, except the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith that he is not guilty: And of this he putteth himſelf upon the country; and the ſaid *B.* likewiſe, *&c.* And as to the ſhooting at, and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him, becauſe he ſaith, that Sir *W. D.* bart. long

Firſt iſſue.

before

before the ſaid time, when, *&c.* and at the ſame time, when, *&c.* was, and ſtill is poſſeſſed of and in a certain antient park called *B.* park in *M.* aforeſaid; in which ſaid park, long before the ſaid time, when, *&c.* and at the ſaid time, when, *&c.* were great numbers of deer; of which park the aforeſaid *H.* before the ſaid time when, *&c.* and at the ſaid time when, *&c.* was keeper, and had the care and cuſtody thereof. And the ſaid Sir *W.* being ſo as aforeſaid poſſeſſed of the ſaid park, the ſaid greyhound bitch at diverſe times before the ſaid time, when, *&c.* was uſed to haunt the ſaid park, and to hunt, chaſe and drive the ſaid deer, in order to bite, wound and kill them, to the great hurt and damage of the ſaid deer; and at the ſame time, when, *&c.* was in the aforeſaid park for the purpoſe aforeſaid; whereupon the aforeſaid *H.* as keeper and ſervant of the aforeſaid Sir *W.* and by his command, at the ſaid time, when, *&c.* in the ſaid park, for the preſervation of the ſaid deer, there did ſhoot at, and kill the ſaid greyhound bitch there, as it was lawful for him to do, which is the ſame ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, whereof the ſaid *B.* doth above in that behalf complain againſt him: and this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *B.* ought to have his aforeſaid action thereof againſt him, *&c.*

Plea to a prohibition.

And the ſaid *T. K.* by *C. G.* his attorney cometh and defendeth the force and injury, when,

when, *&c.* and faith, that he did not profe-cute or follow his faid fuit in the faid fpiri-tual court againft the faid *R. R.* againft the prohibition of our faid lord the king to him directed and delivered in manner and form as the faid *R.* who fueth as well for the king as for himfelf, by his writ and declaration aforefaid hath above fuppofed: And of this he putteth himfelf upon the country; and the faid *R.* who as well, *&c.* likewife, *&c.* And for the obtaining the writ of our lord the king of confultation in this behalf, he the faid *T.* faith, that long before the profe-cution of the faid fuit in the faid fpiritual court againft the faid *R.* he the faid *T.* was and now is feifed of a certain antient mef-fuage with the appurtenances, in *Park Lane* in *Towcefter* aforefaid, in his demefne as of fee, and that the faid pew in the faid church of *Towcefter* in the faid declaration mention-ed, was and is an antient pew, without the addition of any feat or form in the faid church within the memory of man taken in or made parcel of the faid pew; and that he the faid *T.* and all thofe whofe eftate he hath in the faid meffuage with the appurte-nances, and their tenants thereof, from the time whereof the memory of man is not to the contrary, have and hath fuftained, a-mended and repaired the faid pew as often as need required, at his and their own proper cofts, and by reafon thereof from the time aforefaid he and they, and fuch other perfon and perfons as he and they hath and have from time to time licenfed to fit there-in,

First issue.

in, hath and have uſed and been accuſtomed to ſit therein to hear divine ſervice and preaching the word of God in the ſaid church as in a pew belonging to the ſaid meſſuage with the appurtenances, ſo that no other perſon from the time aforeſaid in time of divine ſervice and preaching the word of God in the ſaid church, hath had any ſeat or place in the ſaid pew without the licence or againſt the will of the ſaid *T.* or of thoſe whoſe eſtate he hath in the ſaid meſſuage with the appurtenances, or of his or their tenants thereof for the time being; neither could or ought ſuch other perſon to ſit therein, otherwiſe than by ſuch licence as aforeſaid. And the ſaid *T.* ſaith, that he being ſo ſeiſed of, and dwelling in the ſaid meſſuage with the appurtenances, the ſaid *R.* who as well, *&c.* before the ſaid proſecution in the ſaid ſpiritual court, *to wit*, on the firſt day of *April* in the year of our Lord 1733, in time of divine ſervice in the ſaid church, without the licence and againſt the will of the ſaid *T.* did intrude himſelf into the ſaid pew, and diſturbed him the ſaid *T.* and his family and friends then and there being by and with the licence of him the ſaid *T.* wherefore he the ſaid *T.* for remedy in that behalf, before the prohibition of our ſaid lord the king to the contrary thereof to him directed was delivered, did inſtitute his ſaid ſuit in the ſaid ſpiritual court againſt the ſaid *R.* as it was lawful for him to do; without that, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid antient

tient meſſuage in the ſaid declaration mentioned to be then, or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired one ſeat or form in the ſaid church lately taken in, and made parcel of a pew in the ſaid church, and therefore have had and uſed, for themſelves and family inhabiting in the ſaid meſſuage, the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath ſuppoſed: And this the ſaid *T.* is ready to verify, with this alſo, that the ſaid *T.* will verify, that the pew in the ſaid declaration mentioned, and the pew in the plea of him the ſaid *T.* beforementioned, is one and the ſame pew, and not different: Wherefore he prayeth judgment, and the writ of our ſaid lord the king of conſultation in this behalf to be granted unto him.

Replication in prohibition.

And the ſaid *R. R.* ſaith, that the ſaid *T. K.* ought not, for the reaſon by him alledged, to have his ſaid majeſty's writ of conſultation in this behalf, becauſe he ſaith, as before, that he the ſaid *R.* who as well, *&c.* and all thoſe whoſe eſtate he had and hath in the ſaid ancient meſſuage in the ſaid declaration mentioned to be then or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own coſts repaired

paired one ſeat or form in the ſaid church lately taken in and made parcel of a pew in the ſaid church, and therefore have had and uſed, for themſelves and family inhabiting in the ſaid meſſuage, the ſole and ſeparate uſe of the ſaid ſeat or form for the hearing and attending of divine ſervice in the ſaid church, in manner and form as the ſaid *R.* who as well, *&c.* by his ſaid declaration hath alledged: And this he prayeth may be inquired of by the country; and the ſaid *F. K.* doth the ſame: Therefore as well to try the ſaid iſſue, as the aforeſaid other iſſue between the ſaid parties above joined, the ſheriff is commanded, *&c.* *Vide antea fol.*

Plea to a bond that it was given for money won at play.

And the ſaid *H.* by *G. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and prayeth the hearing of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, Know all men, *&c.* [*the obligation*] and he prays alſo the hearing of the condition of the ſaid writing obligatory, and it is read to him in theſe words, *to wit*, [*here enter the condition*] which being read and heard, he the ſaid *H.* ſaith, that he by virtue of the ſaid writing obligatory ought not to be charged with the ſaid debt, becauſe he ſaith, that after the 29th day of *September* in the year of our Lord 1664, and before the making the ſaid writing obligatory, *to wit*, on the ſaid firſt day of *July* in the ſaid year of our Lord 1733, at *Weſtminſter* aforeſaid, he the ſaid *H.* played with the ſaid *S.* at a certain play with dice called *Hazard*, for diverſe ſums of money

Stat. 16 Car. 2. c. 7.

ney

ney exceeding the ſum of 100*l.* upon tick and credit, and not for ready money; and that he the ſaid *H.* ſo playing with the ſaid *S.* at the ſaid play, then and there at one and the ſame time and meeting loſt upon credit to and with the ſaid *S.* in the whole a great ſum of money, exceeding the ſum of 100*l.* *to wit*, the ſum of 500*l.* whereof no part was then paid by the ſaid *H.* And the ſaid *H.* afterwards thereupon, *to wit*, on the ſaid firſt day of *July* in the year of our Lord 1733, aforeſaid at *Weſtminſter* aforeſaid, made and delivered the aforeſaid writing obligatory with the aforeſaid condition thereto ſubſcribed for the ſecuring the payment of the ſaid 500*l.* by him the ſaid *H.* ſo loſt; and by the ſaid *S.* ſo as aforeſaid at the ſaid play won of the ſaid *H.* at one and the ſame time and meeting, upon credit; whereby by force of the ſtatute in ſuch caſe made and provided the ſaid writing obligatory wholly became and is void, and of no effect in law: And this he is ready to verify: Wherefore he prayeth judgment, whether he ought to be charged with the ſaid debt by virtue of the ſaid writing obligatory, &c.

Replication. And the ſaid *S.* ſaith, that by reaſon of any thing above by the ſaid *H.* in pleading alledged, he ought not to be barred from having his ſaid action againſt him, becauſe he ſaith, that the ſaid bond was not given for ſecuring the payment of money won at the ſaid play by the ſaid *S.* of the ſaid *H.* as the ſaid *H.* hath above pleaded: And this he prayeth may be inquired of by the country;

try; and the ſaid *H.* likewiſe; therefore, *&c.*

And the ſaid *N.* and *I.* by *J. H.* their attorney come and defend the force and injury, when, *&c.* and ſay, that they did not undertake in manner and form as the ſaid *J.* above complaineth againſt them: And of this they put themſelves upon the country; and the ſaid *J.* likewiſe: And the ſaid *M.* by *H. K.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith nothing in bar or preclusion of the aforeſaid action of the aforeſaid *J.* whereby the ſaid *J.* remaineth undefended by the ſaid *M.* by reaſon whereof the ſaid *J.* ought to recover againſt the ſaid *M.* his damages, occaſioned by the non-performance of his ſaid promiſes and undertakings; but becauſe it is not known whether or no the ſaid *N.* and *I.* will be convicted of the premiſſes; and if they ſhall be convicted, it is convenient and neceſſary that there ſhould be only *one taxation* of damages for the whole premiſſes in one writ ſpecified; and thoſe damages ought to be ſettled by a jury of the country in that behalf; and that the writ of inquiry of damages aforeſaid againſt the ſaid *M.* be ſtayed, until the ſaid iſſue as aforeſaid between the ſaid *J.* and the ſaid *N.* and *I.* ſhall be determined; therefore, as well to try the iſſue between the ſaid *J.* and the ſaid *N.* and *I.* above joined, as alſo to inquire what damages the ſaid *J.* hath ſuſtained by occaſion of the premiſſes aforeſaid, the ſheriff is commanded

Award of Venire, and writ of inquiry, where two defendants plead and one lets judgment go by default.

that he cauſe to come here 12 free and lawful men of the body of his county, &c. by whom, &c. and who are not related to the ſaid *N. T.* or *M.* or the ſaid *J.* to recognize, &c. becauſe as well, &c.

Eaſter *Term*, &c.

Middleſex, *to wit.* R. *S.* of, &c. was attached to anſwer *R. T.* and *P. L.* in a plea of treſpaſs upon the caſe, to their damage of 43 *l.* *Roll* 1022.

Afterwards, *to wit*, the 25th day of *July* in the 13th year of the reign of our lord the king that now is, the aforeſaid *R. T.* and *P. L.* come by *H. P.* their attorney conſtituted by a ſpecial warrant to him in that behalf, before Sir *W. D.* knt. ch. juſt. of our ſaid ſovereign lord the king of the bench, at his chambers ſituate in *Serjeants Inn* in *Chancery Lane*, *London*, and acknowledged that they were ſatisfied of the aforeſaid damages: Therefore let the ſaid *R. S.* be diſcharged of thoſe damages.

Acknowledged the 25th day of July 1777, *at* Serjeants Inn, *before me*

W. D.

Of suing out, entring, and returning Process on the Roll, in order to save the Statute of Limitations, 21 *Jac.* 1. *chap.* 16.

THE attorney must make out *Precipe* (*a*) for (*b*) original, according to nature of action; and carry same to filacer (*c*) of that county, wherein the *Venue* is laid; who will procure original, which is carried to the sheriff's office, in order to be returned

---

(*a*) The Form of Precipe for original.

Middlesex, (ff) If *James Marriot* shall make you secure, in prosecuting his claim, then put by gages and safe pledges, *Charles Agate* late of *Paddington* in the said county, shopkeeper, &c. of a plea that whereas (as *in declaration* by original to end thereof.)

Returnable, &c.

J. R.
May 17, 1778.

(*b*) Form of special original.

George the third, *&c.* To the sheriff of *Middlesex* greeting. If *James Marriot* shall make you secure in prosecuting his claim, then put by gages and pledges, &c. *Charles Agate* late of *Paddington* in your county, shop-keeper (as in *Precipe* and declaration to end of them) and have there the names of the pledges and this writ; witness ourself at *Westminster*, *&c.*

(*c*) Pay filacer for original, same as in common cases, and for filing return four-pence.

Non (*d*) *inventus*, this return is filed with the filacer.

If plaintiff is an attorney and fues as fuch, he makes out his attachment of privilege, in the ufual (*e*) manner.

Attachment of privilege is in nature of an original writ, and when replied to, in order to fave the ftatute, it is fufficient to fhew the *Tefte* thereof, without continuances to time of declaration. *Wilf. Rep. B. R.* 167. in error.

Proceedings againft Peers, Members of Parliament, and their (*f*) Servants.

Plaintiffs may proceed and profecute their fuits againft peers and members of parliament, notwithftanding their meetings; and their perfons only are protected from arreft. By *Stat.* 10 *Geo.* 3. *Chap.* 50.

All fuits brought againft peers or members of parliament in this court, are by bill, as againft an attorney or officer of the court.

(*d*) Pay fheriff returning original, or attachment *non eft inventus*, eight-pence.

(*e*) See *ante* fol.

(*f*) Servants of peers and members of parliament, are by *ftat.* 10 *Geo.* 3. chap. 50. *deprived* of every *privilege* they *were* intitled to from their refpective lords and mafters; and therefore may be profecuted and *arrefted* as *common* perfons.

Form of the BILL.

Hilary Term, 18 *Geo.* 3.

To the juſtices of our lord the king of the bench.

Middleſex, *to wit,* *JANE CHAPMAN* by *John Rayner* her attorney, complains of (*a*) *Hartwell Smythe* eſq; having privilege of parliament, in a plea of treſpaſs on the caſe, for that, *to wit,* That whereas, *&c.* [as in a common bill, according to the nature of the action to the end thereof, *viz.* bringeth (*b*) ſuit, *&c.*]

Direction of the bill.

J. R. For the pltff.	Pledges	*John Doe.*
	to	and
For the deft.	proſecute	*Rich. Roe.*

(*a*) If defendant be an *Engliſh* or *Scotiſh* peer, you deſcribe him thus: "*William* duke of *N.* knight of the moſt noble order of the garter," and inſtead of "*Hartwell*" ſay "the ſaid duke" all through the bill; omitting the words "having privilege of parliament": if defendant be an *Iriſh* peer, deſcribe him thus, "*James Conolly* eſq; commonly called the right honourable *James* earl of *W.*" and inſtead of *Hartwell,* ſay "the ſaid *James Conolly* " but the words "having privilege of parliament" are not to be omitted, becauſe the peers of *that* kingdom are conſidered only as commoners in *this.*

(*b*) See note in ſecond vol. 243.

This bill muſt be engroſſed on a [illegible] penny piece of parchment, and ſigned by one of the prothonotories, for which he demands one ſhilling; and then be filed in the office of that filacer, of that county, wherein the *Venue* of the action is laid; his fee, for filing ſame, is two ſhillings and fourpence; and then a writ (*c*) of ſummons, is to be ſued out.

This writ of ſummons muſt be ſubſcribed with the name of the filacer of that county wherein the action is laid; whom you pay for ſigning it eight pence every ſheet; at ſeal office ſeven pence, and for warrant thereon in order to ſummon defendant, 2*s.* 6*d.* which is done by ſheriff's officer's leaving copy thereof at his laſt or moſt uſual place of abode. If defendant does not appear in time, ſue out a (*d*) *diſtringas.*

Pay filacer of the county in which the *Venue* to the action is laid, ſigning *diſtringas* eight pence, every ſheet, ſealing ſame ſeven pence.

If the defendant neglects to appear at the return of the *diſtringas*, a return thereof muſt be procured from the ſheriff, for which his legal demand is 2*s.* 4*d.*; upon which

(*c*) For the Form, ſee 2 vol. 244.

(*d*) For Form ſee 2 vol. 244, 245. An order of court, requiring the appearance of a peer or member of parliament, may be enforced by *diſtringas*, by *ſtat.* 10 *Geo.* 3. chap. 50.

another

another *distringas* must be sued out in same manner as the former, and a third, if necessary, when the plaintiff's attorney may move (e) in the treasury to encrease the issues, (f) which court will order to more than double the former issues, as appears by the following instances, even to the amount of the debt, though no report of such increase be found in *Barnes*.

The practice of this court had been till *Michaelmas* term, 20 *Geo.* 2. not to encrease the issues on *alias distringas's* to more than double the issues returned from time to time, on the former *distringas's*; but in that term, the court observing that the *King's bench* and *Exchequer* had done more, ordered, in conformity to their practice, issues to be returned on the *Pluries distringas* to 20 *l.* the debt sworn to, being 152 *l.* (g). So to the like sum, four pounds issues, having been returned on the *alias distringas*; and the

(e) This being a common motion of course, no notice thereof need be given, nor is any affidavit of facts, or state of proceedings necessary; the rule obtained of the court is to be drawn up with the secondary, for which you pay him five shillings, and sheriff must be served therewith; on whom call at return of *third distringas*, and he will pay plaintiff's attorney the amount of the debt with costs, first deducting his own fees thereout, which are about 12*s.* 6*d.*

(f) The judges, previous to their sitting in court *in term time*, meet in the treasury chamber; which lies adjacent to court; where they hear those and such sort of common motions of course.

(g) *Barnes* 418.

debt ſworn to being 230*l.* (*h*). So to the like ſum, two pounds having been returned on the firſt *diſtringas*; and the debt ſworn to amounting to 1950*l.* (*i*). So to the ſum of 100*l*, 20*l.* having been returned on the *Pluries diſtringas*; and the debt ſworn to being 290*l.* and (*k*) upwards.

If defendant appears after having caſt an (*l*) eſſoin, or after return of the firſt writ of *diſtringas*; plaintiff muſt proceed as on a bill againſt an attorney, and when he hath obtained judgment he muſt ſue out *diſtringas's* as before, till he hath recovered debt and coſts.

(*h*) *Barnes* 420.
(*i*) *Barnes* 420.
(*k*) *Barnes* 422.
(*l*) *Prat*, chief juſtice of this court ſaid, that caſting eſſoins was a very obſolete practice, and a great abuſe of the law, being an unneceſſary delay of juſtice; that if the practice was to be revived, it would be neceſſary to make a new rule of court, and that an eſſoin could not be caſt by attorney. 2 *Wilſ. Rep. C. B.* 164.

BILL

BILL of Costs on proceedings against Members of Parliament.

Easter Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Warrant to proceed and instructions	0	0	0	0	2	2	0	4	4
Drawing bill fo. 40	0	0	0	1	0	0	2	0	0
Fee to counsel to peruse and settle same	1	1	0	1	1	0	1	1	0
Attending him thereon	0	0	0	0	1	8	0	3	4
Parchment and duty for bill	0	2	6	0	2	6	0	2	6
Ingrossing same	0	0	0	0	6	8	0	13	4
Entring on the roll	0	0	0	0	6	8	0	13	4
Paid prothonotary	1	10	0	1	10	0	1	10	0
Ditto filacer for writ of summons	1	8	10	1	8	10	1	8	10
Parchment and duty	0	3	6	0	3	6	0	3	6
Fee thereon	0	0	0	0	1	8	0	3	4
Warrant and messenger	0	2	6	0	2	11	0	3	4
Service	0	0	0	0	2	6	0	5	0
Returning and filing	0	2	4	0	2	4	0	2	4
Term fee	0	0	0	0	2	6	0	5	0
Porters, letters, &c.	0	0	0	0	1	0	0	2	0

Trinity Term following.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching for appearance	0	0	0	0	1	8	0	3	4
Drawing decl. fo. 40	0	0	0	0	13	4	1	6	8

En-

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Engroffing and duty	0	2	0	0	8	8	0	15	[illegible]
Rule to plead	0	1	10	0	2	2	0	2	[illegible]
Searching for and demanding plea	0	0	0	0	2	8	0	5	4
Attending fummons for time to plead	0	0	0	0	1	8	0	3	4
Copy of order	0	0	0	0	0	6	0	1	0
Inftructions for replication	0	0	0	0	1	8	0	3	4
Drawing fame, fol. 3	0	0	0	0	1	0	0	2	0
Ingroffing and duty	0	0	3	0	0	9	0	1	3
Fee to counfel to fign	0	10	6	0	10	6	0	10	6
Attending him	0	0	0	0	1	8	0	3	4
Rule to rejoin	0	1	10	0	2	2	0	2	6
Searching for and demanding rejoinder	0	0	0	0	2	8	0	6	4
Warrant and docquet	0	1	4	0	2	0	0	2	8
Drawing interlocutory judgment, fol. 3	0	0	0	0	1	6	0	3	0
Ingroffing proceedings on paper, and duty, fol. 43	0	1	3	0	7	11	0	15	7
Entring fame on roll	0	0	0	0	7	2	0	14	4
Paid prothonotary	1	12	0	1	12	0	1	12	0
Writ of inquiry, parchment and duty	0	3	6	0	10	8	0	17	10
Paid figning and fealing	0	7	11	0	7	11	0	7	11
Fee thereon	0	0	0	0	1	8	0	3	4
Notice of executing fame	0	0	0	0	1	0	0	2	0
Attending execution	0	0	0	0	6	8	0	13	4
Paid fheriff and jury	1	11	6	1	11	6	1	11	6
Stamp on inquifition	0	5	0	0	5	0	0	5	0

Attending

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending stamp office	0	0	0	0	1	8	0	3	4
Notice of taxing costs, copy and service	0	0	0	0	1	0	0	2	0
Attending taxation	0	0	0	0	1	8	0	3	4
Paid prothonotary, signing final judgment	0	7	4	0	7	4	0	7	4
Paid clerk of judgments	0	2	0	0	2	0	0	2	0
Term fee	0	0	0	0	2	6	0	5	0
Letters and porters	0	0	0	0	1	0	0	2	0

References

References from Court.

ON cause being referred by the court, application must be made to Mr. *Thomas Lloyd* the associate, at his chambers *Lincoln's Inn, New Square*, for the order of reference, you pay for the order, if one cause only referred, four shillings and six pence, if more, in proportion to the length.

The respective attornies of the parties, set down on a piece of paper, the names of such witnesses, as either of them intends to examine on the references, and deliver the same to the crier of the (*a*) court; who will immediately after trial, upon the witnesses being brought up to the bar of the court, swear them, he charges two shillings for every witness sworn to give evidence, for either party.

It is usual for plaintiff's attorney to get (*b*)

(*a*) It is best for both attornies to get their respective witnesses sworn in *court*, or otherwise their clients must be at the expence of bringing them before a judge, for that purpose.

(*b*) Form of arbitrators appointment to sit on reference.

" I do appoint *Thursday* 19th day of this instant *February*, at eleven o'clock in the forenoon, at the sign of the *Sun* Tavern on *Lisson Green*, *Paddington*, in the county of *Middlesex*, kept by *William Haxell*, to sit upon the matters above referred to me. Dated second day of *February*, 1778."

James Agate.

Witness *J. R.* plaintiff's attorney.

appointment

appointment from arbitrator, which, when obtained, he inserts at bottom of order of reference.

When plaintiff's attorney hath procured day of reference appointed by arbitrator, he delivers him copy of order of reference, and also a short brief of his client's case, with the names of the witnesses sworn to give evidence thereon.

Defendant's attorney must be served with an (*c*) exact copy of order of reference, with the arbitrator's appointment thereon.

Defendant's attorney also furnishes the arbitrator with a short brief of his client's case, with the names of the witnesses sworn in order to be examined for the purpose of supporting the same.

On day appointed for hearing the matters referred, the attornies on both sides agree, with the concurrence of the arbitrator, how they shall proceed, and whether the parties themselves shall or shall not be suffered to be present, during the investigation of the dispute, this being settled to mutual satisfaction, plaintiff's attorney opens his client's case, calls his witnesses, and substantiates the same by their (*d*) evidence; after which the

(*c*) This should be carefully examined with the original order and appointment, by the person who serves it, that he may be able to make an affidavit thereof, if necessary.

(*d*) Both attornies have a right to cross examine the witnesses on the other side.

defence

defence is entered into in like (*e*) manner, by the adverse party's attorney.

Both attornies have a right, on summoning up the evidence, to reply to any matters, offered against the case made out on the evidence, for their respective clients.

In case the dispute or matters in difference, are long and intricate, arbitrator is at liberty to adjourn (*f*) awarding the same, as suits his conveniency, to a future day; provided he makes his award in writing within the time limited by the order of reference.

If arbitrator cannot, or does not make his award in writing in time, either party, on affidavit of the reasons thereof, may, on motion (*g*) in court procure (*h*) enlargement of time.

(*e*) The arbitrator takes minutes of the evidence given on both sides; and generally appoints a future day for making his award.

(*f*) It is most prudent for arbitrator's attorney to give the attornies of both parties, notice in writing of the adjournments, in order to prevent all excuses for not attending, or pretence for suspecting any partiality in the arbitrator.

(*g*) Notice of this motion must be given, and affidavit of service thereof, annexed to former affidavit.

(*h*) If court grants further time, rule thereof must be drawn up with secondary, for which is paid five shillings, same must be served on arbitrator; and on his fixing a further time to arbitrate, same rule, with copy of his appointment must be served on both the attornies.

Arbi-

Arbitrator's attorney draws up the *(i)* award from the minutes taken by the arbitrator; and when prepared and executed, he gives both the attornies notice of it's being ready for delivery, that each may take away his part and pay for the fame.

If party *(k)* in whofe favour the award is made takes his part, and the other neglects coming to receive his, it will be neceffary for the arbitrator to tender or caufe to be tendered, his award, to the party refufing to accept the fame, that, upon affidavit thereof, *(l)* order of reference may be made a rule *(m)* of court.

If order is not complied with, within the time directed by rule, an affidavit of fervice

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(*i*) The award is decifive between the parties, unlefs it can be clearly proved to the court, that the fame was made in direct oppofition to evidence, or that the arbitrator acted corruptly or difhoneftly in any refpect; and even then application for relief muft be made before the order of reference is made a rule of court, elfe he will be too late. The award recites the order of reference, and then runs as awards ufually do, only obferving the neceffary alterations throughout, arifing from the difference of being arbitrated by virtue of an order of court inftead of bonds of arbitration: there muft be two parts, each ftamped with a *five fhilling* impreffion.

(*k*) After award made, party in whofe favor fame is given, takes award from Mr *Lloyd*, with *Poftea* indorfed, in order to complete his judgment.

(*l*) The cofts at law are taxed by prothonotary on this order of *Nifi prius*, and he is governed thereby in his taxation.

(*m*) This rule is drawn up by the fecondary, for which he is paid five fhillings; it muft be ferved on the difobedient party's attorney.

(n) there-

(*n*) thereof, court will grant an (*o*) attachment; this rule muſt be drawn up with ſecondary, for which he is paid five ſhillings.

If attachment is executed, court will not diſcharge party, till he has fully complied with award, and ſatisfied all coſts incurred by his contempt.

Summonſes.

Summonſes are to be taken out before a judge of the court; pay for every of them and renewal, whether it be term time or vacation, two (*a*) ſhillings.

Summons, regularly (*b*) obtained, is a ſtay

(*n*) Which muſt be perſonal. *Barnes* 404.

(*o*) The rule for making the order an act of the court, muſt be taken to a clerk in court, in the crown office, who will thereupon make out the attachment, for which he charges 13*s.* and 4*d.* this is taken to the ſheriff of the county in which the party to be attached, reſides, who will make out a warrant for 2*s.* 6*d.*

(*a*) Summons taken out by an attorney of the court, if defendant, is ſeldom charged any thing.

(*b*) Judgment ſigned after ſummons for time to plead, ſupported by court, it appearing upon affidavit, that the ſame was not ſerved till after rule to plead was out. *Barnes* 241, 242, 252, 254, 273. it is an abuſe upon the judge to apply for his ſummons, after rule to plead expired, *Barnes* 252. for had he known the rule was out, he would not have granted the ſummons, the judge therefore was impoſed upon. *Barnes* 254. but tho' ſuch judgment is ſtrictly regular, yet court ſet it aſide on payment of coſts, pleading general iſſue, and taking ſhortnotice of trial; *Barnes* 254. if they conſider it as quick practice. See an inſtance in *Barnes* 265, 266.

ſtay of proceedings, till (*a*) diſcharged, or other order made thereupon. *Barnes* 252.

True copy of all ſummonſes muſt be (*b*) ſerved on proper parties; which ſhould be examined with the originals previous to their ſervice, becauſe it may be neceſſary to make affidavit thereof.

Summons muſt be attended an hour before it can regularly be renewed, and when it is, it is marked on the ſide "*ſecond ſummons,*" and ſerved and attended as before; if not attended within the hour, it muſt be renewed, marked "*third ſummons,*" and ſerved; if not timely attended, upon affidavit (*c*) thereof, judge's clerk will procure you

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(*a*) Becauſe judge is not ſuppoſed to know the ſtate of the cauſe, in which the ſummons is granted, the ſame being iſſued of courſe, on application.

(*b*) The party's attorney muſt always be ſerved, in caſe he hath one, if not, it muſt be left at his laſt or moſt uſual place of abode, unleſs *perſonal* ſervice is required.

(*c*) The form of which may be thus:

In the *Common Pleas.*

Jane Chapman,
againſt
John Raymer.

George Hazel, of *Gray's Inn*, in the county of *Middleſex*, gentleman, clerk to *Charles Benton*, attorney for the plaintiff in this cauſe, maketh oath and ſaith, that he this deponent on the 13th, 14th, and 15th days of this inſtant *June*, ſeverally ſerved the ſummons hereunto annexed, by ſeverally delivering true copies thereof to *William Riley*, attorney for the defendant in this

 cauſe,

you an (*d*) order for the matter contained in the summons; which must be served in like manner as summonses.

If summons issues for any matter, which the suitors of the court are, by any rule or order thereof, bound to obey, or in which the judge cannot make an order *ex parte*, the non-attendance of the attorney, in cases wherein it is his duty to attend to enable the judge to do the party justice, or non-compliance of the client, will subject them (on judge's order being made a rule of court, to obtain which is a motion of course) to an attachment of contempt.

The matter for which summonses are granted, are very various; some, and the most usual, are for the following purposes, *viz.* to pay (*e*) debt and costs; to shew cause why

cause, and at the same time shewing him the said annexed original summons. And this deponent further saith, that on the *three* several days and times therein mentioned he only attended an hour thereon, but that the said *William Riley*, or his agent, or any other person on their or either of their behalfs, did not on either of the said three several days aforesaid attend thereon, to the knowledge or belief of this deponent.

Sworn, &c. *G. H*

(*d*) You pay judge's clerk two shillings for every order.

(*e*) The debt must be ascertained between the parties, before any order can be obtained. If party applying doth not pay the costs, when taxed, or at the time given by the order, the other side may proceed, as if no such order had been obtained. Defendant on this summons may obtain five or six days to pay debt and costs, but the

why common bail should not be accepted, instead of special (*f*); when affidavit for latter is not sufficient or well founded; for time to put in bail above; for leave to add to and perfect bail; for liberty to justify bail; and for time to plead.

If judge makes an order, for any of the above matters, which he generally does of course, if the party applies in time; it will be upon condition to observe the following (*g*) terms, *viz.* pleading (*h*) issuably, rejoining (*i*) *gratis*, taking (*k*) short notice of trial, or of inquiry, if necessary, within term.

Where application is made, in a *town* cause, for time to put in, add to, or perfect bail; or for time to plead, defendant's attorney will be obliged to enter into an order to plead an issuable plea: and if he afterwards pleads a dilatory plea, or such an one as prevents the law being argued, or the fact tried thereon; judgment may be signed

the judge will hold him to above mentioned terms, of pleading issuably, &c. if early in the cause, so that plaintiff may not be delayed of trial, in case defendant does not comply with the order.

(*f*) The grounds of this application must be supported by affidavit.

(*g*) Party will not be bound to all the terms, *viz.* pleading issuably, &c. on first summons, unless state of cause requires them.

(*h*) See *P.* 182, *note* (*a*)

(*i*) See *Id. note* (*b*)

(*k*) See *Id. note* (*c*)

 as

as if no plea had been pleaded, and give notice of executing writ of inquiry.

Summons for (*l*) time to plead was served upon plaintiff's attorney, who attended an hour; but defendant's attorney never came; whereupon plaintiff's attorney signed judgment, which was set aside by court as irregular, because he had not previously discharged defendant's summons. *Barnes* 240.

In another case, plaintiff's attorney signed judgment, though he did not attend or discharge defendant's summons, or give him an opportunity to renew cause, defendant's attorney having offered to plead issuably, and take notice of trial, time enough for plaintiff to have tried his cause at last assizes; this judgment the court declared to be irregular, the summons not being discharged, and accordingly set it aside. *Barnes* 255.

Prisoner may apply by summons (*m*) for an order for a *supersedeas*, on not being declared against in two (*n*) terms after return of writ.

Bankrupt must (*o*) summon plaintiff before a judge, to shew cause why he should

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(*l*) Judge's summons, or order for time to plead shall be no bar to motion to change *venue*. Barnes 489.

(*m*) On neglect to attend the judge, he will make an order to discharge prisoner on *first* summons, for *that* is peremptory, this being a case of liberty.

(*n*) The term wherein the writ is made returnable, is always considered as one of the terms.

(*o*) The order of discharge or *supersedeas* will be granted on the *first* summons.

not

not be discharged out of custody, having surrendered himself in discharge of his bail, and obtained his certificate; which he producing duly allowed by the lord chancellor, judge will make an order directed to the (p) warden or keeper of the prison in which bankrupt is confined, to discharge him without fee or reward, he being detained at no other person's suit, since the bankruptcy. See *Barnes* 104.

Defendant may be discharged when in custody, after his bail is perfected, by (q) summons also before a judge.

An infant may have a summons granted him, for plaintiff to shew cause why defendant should not name a guardian to defend his suit.

Summons for an attorney to deliver in to his client, a bill of his fees and disbursements.

THIS summons should have the title of the causes, in which he makes his demand, on the margin thereof.

If the attorney neglects to attend, *three* summonses having been issued and served

(p) If prisoner is not in custody of *warden*, he must be discharged by writ of *supersedeas*, for an order in this case will only obtain the *supersedeas*, not authorize a discharge.

(q) But three summonses, and affidavit of their being regularly served, are necessary in this case.

for that purpose, the judge will order him *ex parte* to deliver his bill of fees and disbursements in a reasonable time, and if he makes further default on his being served with a rule of court, (which is made of course upon motion and affidavit of the service and neglect of attending the three summonses,) an attachment of contempt will issue, upon which no bail is accepted, and the attorney can clear his contempt by no method but obeying the order of the judge, the rule of court, and paying the costs of the attachment.

If the attorney delivers his bill, in obedience to the judge's order, party must take out a summons to shew cause, why the bill of fees and disbursements delivered by him in the above named causes, should not be referred to the prothonotary to be taxed; in case the attorney neglects to attend, being regularly served with three summonses, on affidavit thereof, and of attending thereon, and the client undertaking, in writing under his hand, to pay the attorney the whole sum, that shall appear to be due to him on the taxation, the judge, on his application, will order the bill *ex parte* to be referred to the prothonotary to be taxed; whereon he marks an appointment for that purpose, at the bottom thereof; which order, with the appointment of taxation, must be served on the attorney, whose bill is referred; in case the attorney does not attend, being duly served with three appointments, the prothonotary, on affidavit thereof, and of

of the regular attendances thereon, will tax the bill referred *ex parte.*

Pending the ſummons, order, and taxation, nor after (if the ſum, at which the bill is taxed, is tendered the attorney) he cannot bring an action. See *ante* 49. *ſtat.* 2 *Geo.* II. *chap.* 23. *ſect.* 23. *ante* 46, 47, 48.

On defendant's delivering a dilatory plea, if plaintiff makes up and delivers paper book; this amounts to a waiver of the agreement between the parties on judge's order, whereby plaintiff looſes his remedy thereon, and muſt then proceed on paper book, as if no ſuch order had ever been made.

Defendant may obtain *further* time, if not under all the above terms, provided ſuch order does not prevent cauſe being tried ſame term in which writ was made returnable; in caſe he could have gone to trial, had no time been granted.

Where cauſe of action, in country cauſes, is local, and cannot be tried but at the aſſizes, judge will be governed in his orders, in all the above caſes, according to the time of holding the aſſizes, ſo as not to prevent cauſe from being tried at the then next aſſizes, if plaintiff chuſes it.

In caſe either party reſides in the country, and cauſe of action is tranſitory, ſame doctrine is held as in a town cauſe, allowing for difference of notices to bring ſame to iſſue.

Miftakes in declaration or iffue, may be amended (*a*) by fummons.

Proceedings on bail-bond, are ftaved by order obtained on fummons; provided trial be not loft thereby, for in that cafe not even the court itfelf, on motion, will make a rule for that purpofe: and in cafe judge makes an order, he will oblige defendant to perfect his bail previous thereto; and alfo to pay (*b*) cofts, receive a declaration, plead iffuably, take fhort notice of trial (*c*), fo that the iffue may be tried fame term.

Mutual Debts, and Set offs.

Where there are mutual debts between plaintiff and defendant, or if either party fue, or be fued, as executor, or adminiftrator, where there are mutual debts between teftator or inteftate, and either party; one debt may be fet off againft the other;

(*a*) All proceedings, while on paper, are amendable by fummons, by the eftablifhed practice of this court; except declaration in *ejectment*, which court confiders as firft procefs in that action.

(*b*) If the cofts, when *taxed*, be not paid, the action on the bail-bond may be profecuted, as if no order had been made.

(*c*) If trial hath been loft, bail muft confent that judgment may be entered againft them on the bail-bond for plaintiff's fecurity.

and

and ſuch matter may be given in (*a*) evidence, upon the general (*b*) iſſue, or pleaded in bar, as the caſe ſhall require, ſo as at the time of pleading the general iſſue, (*c*) notice be given of the particular ſum or debt, intended to be inſiſted upon, and upon what account it became due. Stat. 2 *Geo.* 2. chap. 22. ſect. (*d*) 13.

(*a*) Before this clauſe of the act, mutual debts were to be pleaded ſpecially in bar. *Rayn. Read.* on ſtat. 2 *Geo.* 2. chap 22. ſect 13. p. 31.

(*b*) General iſſue in this clauſe, means any general iſſue *Barnes* 290 *Bul. Ni. Pri.* 177, 178.

(*c*) Reaſon of directing notice to be given of the particular ſums intended to be ſet off, on pleading general iſſue, is, that plaintiff may thereby know nature of defendant's demands, and be prepared to controvert them, as well as prove his own. *Rayn Read.* 31. This notice cannot be amended, but defendant may withdraw his plea, and plead *de novo*, with new notice of ſet-off. *Barnes* 308, 309. Trial not to be put off, for abſence of witneſs, who only proves this notice. *Barnes* 437. Plea tho' with notice of ſet-off muſt be delivered in town. *Rich. Pract Reg.* 125, 281.

(*d*) It had, it ſeems, been a practice in the courts of *Weſtminſter* Hall, (founded on principles of common law) to diſallow ſtoppage or retaining as payment, and for perſons mutually indebted to bring action againſt each other; whether their reſpective debts were of a leſs or equal amount, or of the ſame nature; the numberleſs vexations and real hardſhips this practice was daily productive of, induced the great and good Lord Chancellor *Talbot* to promote this law, (which is founded on the ſtricteſt ideas of equity and juſtice) to remedy the enormous evil in queſtion. *Rayner's* reading on this clauſe, p 24. which is perpetuated by ſtat. 8 *Geo.* 2. chap. 24. ſect. 4. becauſe (ſays the legiſlature, in the preamble thereto) the proviſion was highly juſt and reaſonable at all times.

Not-

Notwithſtanding however the ſalubrity of this clauſe many (*e*) doubts were entertained in courts of juſtice, concerning the legal conſtruction thereof; the principal opinions have been collected by a gentleman (*f*) of ſome authority in the profeſſion, to whom we refer (*g*) the learned reader.

Theſe doubts occaſioning (*h*) contrariety of opinions, the legiſlature (*i*) thought proper to interfere, by enacting that "where there are mutual debts between plaintiff and defendant, and defendant's demand (and for which the action is brought) exceeds plaintiff's, the ſame ſhall be given in evidence," and for that purpoſe the defendant uſually pleads the general iſſue, and delivers a notice of ſet-off; which plea and notice are to be engroſſed on a treble penny ſtampt ſheet of paper, and left with the plaintiff's attorney; the perſon who leaves them muſt engroſs another copy of the plea and notice on a like ſtampt ſheet of paper, in order to read the ſame on the trial of the cauſe.

In caſe defendant's demand does not countervail plaintiff's, defendant muſt move court wherein action is depending, for leave to pay ſo much money therein, as, with his

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(*e*) See *Barnes* 290, 354. *Rich. Pract. Reg.* 267.

(*f*) *John Rayner*, author of the readings above referred to.

(*g*) *Rayn.* Read. 24, 25, &c.

(*h*) Id. 28.

(*i*) By ſtat. 8 *Geo.* 2. chap. 24. ſect. 5.

own demand, will be fufficient to fatisfy plaintiff's.

Rule obtained on this motion muft be drawn up and ferved, by annexing copy thereof to general iffue and notice; another copy of plea and notice is to be engroffed as before obferved, for the purpofe of reading fame on the trial of the caufe, if neceffary.

General iffue with notice of fet-off.

In the common pleas.

Eafter *term, in the* 18th *year of the reign of king* George *the third.*

Jane Chapman, fpinfter
againft
John Rayner.

AND the faid *John*, by *Charles Singleton Darrington* his attorney, comes and defends the wrong and injury. when, &c. and faith that he did not undertake and promife in manner and form as the faid *Jane* above complains againft him; and of this he puts himfelf upon the country.

Take (*a*) notice that the above named

(*a*) In the notice of fet-off, the ufual way is for defendant to traverfe the counts in plaintiff's declaration, according to the nature of the cafe.

defen-

defendant intends to give in evidence, and insist upon the trial of this cause, that the above named plaintiff, at the time of suing forth the original writ against the said defendant in this cause, was and still is indebted to the said defendant in 40*l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes of the said defendant by the said defendant, to the said plaintiff, at her special instance and request, sold and delivered; and also in 40*l.* of like lawful money, for so much money by the said defendant, to and for the use of the said plaintiff, at her like special instance and request, paid, laid out, and expended. And also in other 40*l.* of like lawful money, for so much money, by the said plaintiff, to the use of the said defendant, had and received; and that the said several sums of money, or so much thereof as may be necessary, will be set off in satisfaction of and against the money supposed to be due to the said plaintiff, for the matters contained in the declaration in this cause, according to the form of the statute in such case lately made and provided. Dated the 21st day of *February*, 1778.

Your's, &c.

C. S. Darrington, attorney
for defendant.

To *William Stock*, attorney
for the plaintiff.

Indorsement

Indorſement.

Eaſter Term, 18 *Geo.* 3.

Chapman ſpinſter } and } Plea and notice of ſet-off. *Rayner.* }

JUdgment of *B. R.* ordered to be ſet off againſt judgment of *C. B.* and balance due to plaintiff, to be paid by defendant in *C. B.* 3 *Wilſ. Rep.* 396.

In caſe of a ſet-off, where an indorſed note is ſet-off by defendant againſt plaintiff's demand, it muſt be proved that indorſer's name was written before plea pleaded. *Barnes* 453.

Motions.

ALL motions (*a*) muſt be made in open court, (except ſuch as are made in the treaſury,) for which purpoſe the ſerjeant who moves, muſt be furniſhed with an affidavit, ſtating the fact, on which he grounds his motion; if it is a matter of courſe, it is

(*a*) On theſe motions, rules, whether *Niſi* or abſolute, muſt be drawn up with ſecondary, and paid for, according to length.

granted,

granted, in the firſt inſtance, without readding the affidavit; if it is to be diſcuſſed before and by the court, notice muſt be given in writing of the intended motion, and the purport of it, to the adverſe party's attorney, and affidavit of the ſervice, as well of the merits muſt be produced to the court, which being read, a rule to ſhew cauſe is generally granted; this muſt be (*b*) ſerved on adverſe party's attorney, and an affidavit thereof prepared againſt the time appointed by the court for the oppoſite ſide to ſhew cauſe; whereupon he takes copies of all the affidavits, otherwiſe he will not be permitted to ſhew cauſe, which, for that purpoſe, are filed in the prothonotary's office.

The facts whereon theſe applications are made, vary extremely, but the moſt uſual follow.

For error in proceſs, or the notice ſubſcribed thereto.

Previous to this motion, notice in writing muſt be given to the oppoſite party's attorney; a copy whereof, and of the writ

(*b*) To make perfect ſervice of *rule*, original muſt be ſworn to have been ſhewn to party, *at time of ſervice*. *Barnes* ſays at time of *ſerving copy*, ſee *Barnes* 403. this expreſſion ſeems abſurd, for the *original* is *ſerved* by delivering or leaving *copy*. *N. B.* This doctrine does not hold in ſervice of proceſs. *Barnes* 302. where ſame abſurdity is repeated, but he hath adopted our mode of expreſſion in p. 422.

(*a*) ſerved,

(*a*) ſerved, an affidavit ſtating the error in the writ, and that he was ſerved with no (*b*) other, together with the affidavit of ſervice, muſt alſo be annexed, in order to be read in court, when the (*c*) motion is made; whereupon court grants a rule, *niſi*, which muſt be ſerved; on affidavit whereof court makes ſame abſolute, and directs coſts of application, at diſcretion; if cauſe be ſhewn, proceſs muſt be produced.

Error (d) on writ of inquiry, or execution thereof.

This (*e*) motion requires notice, affidavit thereof, and of facts; upon reading which, rule *niſi* will be granted, it muſt be ſerved; on affidavit whereof, court will make ſame abſolute, and order coſts, at their diſcre-

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(*a*) Whenever defendant will take advantage of a miſtake in the proceſs of the court, he muſt produce the copy ſerved. *Barnes* 298.

(*b*) *Barnes* 298.

(*c*) This motion muſt be made, before interlocutory judgment ſigned, *Barnes* 256, 296. *ante* 92. or court will not interfere, ſo as to prevent ſuit being carried on to judgment.

(*d*) If defendant takes any ſtep in cauſe after *error* committed by plaintiff, in his proceedings, ſuch ſtep cures the irregularity, and court will not afterwards redreſs defendant; and ſo *vice verſa*.

(*e*) It muſt be moved, before rule on inquiry is out, elſe court will not releaſe.

tion; if cauſe be ſhewn, inquiry muſt be produced.

To ſet aſide aſſignment (c) of bail bond.

If plaintiff hath been irregular in taking the aſſignment, the court (*d*) will ſet it aſide, on defendant's putting in and perfecting his bail; and will ſubject plaintiff to the coſts of the application.

For payment of money into court, and for conciliums.

No notice or affidavit of facts is required on either of theſe motions. See more as to payment of money, *ante* 155 to 160. both incluſive.

For changing the Venue.

No notice requiſite, only affidavit, this motion cannot be made laſt day of term, becauſe (*e*) there is not a day left in term, for plaintiff to ſhew cauſe, and though defendant could not procure affidavit for that purpoſe (*f*) ſooner. See more on this ſubject, *ante* 161 to 165.

(*c*) For more on this ſubject. See *ante* 118.

(*d*) But the application by *ſummons* is a much eaſier expence.

(*e*) *Barnes* 480. *ante* 163.

(*f*) *Barnes* 486.

For

For special Jury.

Neither notice nor affidavit required. See *ante* 215, 216.

To put off trial for want of a material witness.

This motion requires notice and an affidavit of service; and also of the (*g*) absence of a witness, and that he is (*h*) material, where he is, and when he is expected to be subpoenable; and the motion must be made (*i*) two days, before the day of trial, or the court will (*k*) refuse it.

This affidavit must be made by defendant (*l*) himself, and by no (*m*) other person; belief

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(*g*) *Barnes* 437, 440, 452.

(*h*) *Ante* 215. If the witness sworn to be absent, is to prove notice of set-off only, court considering that matter as a collateral defence, refused to put off the trial, observing that no trial had been ever put off on that account. *Barnes* 437.

(*i*) It appearing, the witness being material was a matter that did not come to defendant's knowledge time enough to move two days before last day appointed for trial, the same was put off. *Barnes* 452.

(*k*) *Barnes* 438, 442, 444.

(*l*) *Barnes* 437.

(*m*) This was overruled, court observing, that there might be many cases, in which a *third* person could swear another to be a material witness, and defendant himself

belief (*n*) only will not do. For more on this subject see *ante* 215.

For new (o) trials or in (p) arrest of judgment.

If party, against whom verdict is obtained on trial, or judgment on inquiry, would have new trial or inquisition, or would arrest judgment on either; it must be done, if on verdict, before or on appearance day (*q*) of return of *Hab. Corp. Jur.* and on inquiry before time given to move in arrest of judgment is (*r*) expired.

Motion to set aside verdict must be made before judgment pronounced. *Ante* 219.

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himself could not; and instanced a factor selling goods for his principal, and employing a porter to deliver them; in this case factor would know porter to be a material witness, but principal did not.

(*n*) *Barnes* 437, 448.

(*o*) See *ante* 219. Where any matter of title is in dispute, and defendant obtains a verdict, court will not grant plaintiff a new trial, unless revenue is concerned, *Barnes* 440. nor in case verdict be for defendant on a penal statute. *Barnes* 464 nor in ejectment, if verdict for defendant, otherwise if for plaintiff.

(*p*) See *ante* 219. Court will not arrest judgment on matter party might have availed himself of, before issue joined. *M. S. Cas.*

(*q*) *Barnes* 445.

(*r*) Unless the foundation of the motion, be some matter discovered afterwards. *Barnes* 442. ante 219.

If new trial or inquisition be denied, party may afterwards move, on proper affidavit of facts, to arrest judgment; but after motion in arrest of judgment made and refused, new trial or inquisition cannot be obtained.

In order to obtain arrest of judgment, on *postea* or inquiry, the first motion is for (*s*) rule to bring them into court; affidavit must be made of service of rule, and both annexed to affidavit of facts, on which the motion in arrest of judgment is grounded.

The court will set aside proceedings for any irregularity on either side, in the course of a suit, so as the party complained against be not put to a greater expence, than he would have been subject to, had the motion been made before.

If plaintiff enter appearance for defendant, before his time to enter same, is expired; this irregularity must be complained of, before judgment, *ante* 107.

Defendant cannot move to set interlocutory judgment aside, unless motion be made two days before day appointed for (*t*) execution of writ of inquiry of damages. *Barnes* 255, 372.

If papers are required to be delivered up, which attorney refuses, court on motion will rule him so to do, or issue attachment.

(*s*) Which must be drawn up with secondary, paid for 5*s*. and served.

(*t*) So must an application for any irregularity in delivery or notice of declaration, *ante* 134.

BILL of COSTS on Motion to set aside JUDGMENT.

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Office copy of defendant's attorney's affidavit, at 8*d.* per folio, besides duty									
Close copy sent, at 4*d.* per folio	0	0	0	0	1	8	0	3	4
Affidavit of plaintiff, at 8*d.* per folio, besides duty and oath	0	2	7	0	8	7	0	13	7
Affidavit of plaintiff's attorney, fo. 18, at same rate	0	2	7	0	9	7	0	14	7
Another fo. 5	0	2	7	0	4	3	0	5	11
Brief of affidavits, fo. 48, at 2*d.* per folio	0	0	0	0	6	8	0	13	4
Office copy of rule *nisi*	0	3	6	0	3	6	0	3	6
Fair copy of brief for council, four sheets	0	0	0	0	6	8	0	13	4
Fee to serjeant therewith	2	2	0	2	2	0	2	2	0
Attending him and court when rule discharged with costs	0	0	0	0	3	4	0	6	8
Rule	0	5	0	0	5	0	0	5	0
Copy and service	0	0	0	0	1	0	0	2	0
Drawing bill of extra costs	0	0	0	0	0	6	0	1	0

Attending

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending taxing ſame	0	0	0	0	1	8	0	3	4
Term fee and letters	0	0	0	0	3	6	0	7	0
Fi. fa.	0	3	0	0	6	6	0	10	0
Warrant thereon, and meſſenger	0	2	4	0	2	10	0	3	4
Officer for levy	1	1	0	1	1	0	1	1	0
Poundage on 80 *l.* at rate of 1 *s.* per pound									

Action for Crim. Con.

IN cases of this kind, which differ from actions brought upon contracts, no bail is required, unless by the special (*a*) order of a judge, which defendant hath a right to apply to court to (*b*) discharge, if not well founded. *Rich. Pract. Reg.* 63.

This action not being considered, as a mere action of assault and battery, within the meaning of *stat.* 22 and 23 *Car* II. *chap.* 9. *sect.* 136. but an action founded on special damage; be the damages given by the jury ever so small, plaintiff shall have full costs, without certificate of judge, under said act of parliament. 3 *Wils. Rep.* 319.

(*a*) *Catmur* was held to bail upon lord chief justice's order, upon affidavits of *Crim. Con.* with *Hadderweck*'s wife, and had four days time to put in same. *Barnes* 61.

(*b*) *Catmur* applied to court, and upon reading affidavits of himself and *Hadderweck*'s wife, that *Hadderweck* having been long beyond seas, and she having had advice of his death, received *Catmur*'s addresses, and married him as her second husband; the chief justice, (to whom *Catmur* had before applied at his chambers, and before whom the above affidavits were read, and who ordered him to apply to court,) was of opinion, that the order for bail ought to be discharged, nothing criminal appearing in *Catmur*, *Fortescue* and *Reeve*, j. thought, that entring into foundation of order, was examining merits of cause, and therefore improper before trial. *Denton* j. was absent. *Barnes* 61.

Trial

Trial at bar granted, the damages laid in the declaration, being (*c*) confiderable, and a great (*d*) number of witneffes to be examined; plaintiff having liberty to examine a witnefs in an ill ftate of health, before a judge in the mean time, and defendant confenting to waive his privilege of (*e*) parliament. *Barnes* 438. *Rich. Reg.* 411. *Co. Caf.* 103.

Plaintiff muft prove his (*f*) marriage on the trial; which may be done, either by copy of regifter, or by teftimony of one who was prefent at ceremony; and it is fufficient to prove the marriage, according to form of any religion, as of Anabaptifts, Quakers, Jews, *&c.* *Bul. Ni. Pri.* 28.

(*c*) *Viz.* 50,000 *l.* *Rich. Reg.* 411. *Barnes* 438.

(*d*) Upwards of 20. *Barnes* 438.

(*e*) *Quere*, the authority of a court of juft ce to enjoin a member of parliament to waive his privilege, he not being at liberty to do it, according to the better opinion, without leave of the houfe, firft obtained by order therein, on motion; for it is not a perfonal common right, but a public fpecial privilege, founded in political convenience, and therefore does not feem to fall within even the rule of "*Quilibet poteft renunciare jure* PRO SE *introducto*," mentioned by the Englifh "*Servius Sulpitius.*" See 2 *Inft.* 183.

(*f*) *Pratt*, ch j. delivered it as the opinion of this court, that "defendant's having ferioufly and folemnly declared, he knew the woman he had feduced was plaintiff's wife," would be evidence proper to be left to the jury, *without proving the marriage.* Wilf. Rep. B. R. 399.

Wife's confession will be no evidence against (*g*) defendant; so letters (*h*) written to her by defendant, may be read as evidence against him.

Proper plea under statute of limitations, [*viz.* 21 *Jac.* I. *chap.* 16.] is not guilty within six years. *Introduct.* (*i*) *to Law relative to Trials at* Ni. Pr. 28.

Directions for inrolling Deeds.

CARRY the deed to a judge, either at his chambers or house, or, if in term time, it may be done in *Westminster* Hall; in case of a bargain and sale, one of the parties must attend and acknowledge it; but if the deed only requires the judge's *fiat*, then the party need not attend, for the judge grants a *fiat* (*a*) of course, which, as well

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(*g*) But a discourse between her and him, may be proved. Trial at *Ni. Pr.* 28.

(*h*) But her letters to him will be no evidence for him. *Id. ib.*

(*i*) This introduction is said to be originally wrote by lord chancellor *Bathurst*, and revised by Mr. *J. Buller*.

(*a*) The *fiat* is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows: "Let this deed be inrolled in his majesty's court of *Common Pleas*, at *Westminster*. [If a Roman Catholic deed, add the words "*pursuant to the act of parliament*" immediately after the word "*Westminster*."] Dated this 20th day of *March* 1778, before *George Nares*, (judge's name)

as

as the (*b*) acknowledgement, are the officer's warrant for inrolling the deed.

Clerk of (*c*) warrants of attorney, ſupplies you with rolls *gratis*, for ingroſſing (*d*) the deeds on.

If attorney ingroſſes the deed; after examining the ſame, he takes it to warrant of attorney's office, and the (*e*) clerk will immediately indorſe, docquet, and inroll it, being obliged ſo to do.

All deeds inrolled are docqueted or entered in alphabetical order in warrant of attorney's office, for the convenience of thoſe who may have occaſion to ſearch, or take copies or extracts thereof.

(*b*) The acknowledgement is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows:

"The execution of this deed was acknowledged (in court) by *James Cox*, (*the perſon acknowledging ſame*) party thereto, this 20th day of *April* 1778, before

GEORGE NARES."

(*c*) His office is kept at N°. 6. *Clifford's Inn, Fleet Street.*

(*d*) Clerk of warrant, if deſired, is obliged to ingroſs the deed upon the rolls.

(*e*) It not being neceſſary in this court, as in *King's Bench*, for attorney to indorſe deed, or carry in docquet.

Fees

Fees for inrolling.

	Offi. Ch.			Attorn.		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*
Acknowledging in court	0	1	0	0	1	0
Before a judge at chambers	0	5	0	0	5	0
Fiat —— ——	0	2	6	0	2	6
Inrolling per ſheet (92 words)	0	0	3	0	0	8
Docqueting — —	0	1	0	0	3	4

A Rule

A Rule or Measure of Costs comprehending such Items of Disbursements and Fees, as have not occurred, or been before submitted to the Reader, in the former Part of this volume.

WRITS.	l.	s.	d.
NON *omittas capias* — Attachment of contempt	0	10 8	2 3
Attachment proper —	0	8	3
Testatum attachment —	0	10	6
Subpoena ducens tecum —	0	8	0
Drawing and ingrossing *Scire facias per* sheet each —	0	0	8
besides fee —	0	6	8
Special original, *per* sheet —	0	0	8
Fee —	0	6	8
Writ of possession fee 3*s.* 4*d.* Making the writ 1s. 8*d.* —	0	5	0
Test. Fi. Fa. and *Ca. Sa.* each	0	10	6

SERVICE, &c.

Serving notice of declaration, or executing a writ of inquiry (if under 20 miles 3*d. per* mile to and from the place, *i. e.* 6*d. per* mile in the whole.

The like allowance in case of conduct-money.

If

	l.	s.	d.
If above 20 miles, for a neighbouring attorney ——	0	10	6

To allow 1*s.* 4*d.* for every defendant the plaintiff appears for, over and above the 5*s.* 4*d.* allowed for the first defendant.

Entring appearance between attorney and client ——	0	5	4
Copies of affidavits in order to shew cause, *per* sheet —	0	0	4

ACTIONS *on judgments or statutes.*

	l.	s.	d.
Drawing, *per* sheet ——	0	0	8
Copying ——	0	0	8
Entring —— ——	0	0	8
Term fee ——	0	6	8

ISSUES, &c

Drawing forejudger 2*s.* ingrossing the whole, *per* sheet —	0	0	4
Drawing and ingrossing affidavit, *per* sheet ——	0	0	8
Drawing judgment 2*s.* ingrossing the whole, *per* sheet ——	0	0	4

Preparing for TRIAL.

Town witnesses (if the charge exceeds 40*s.* allowed in common costs) *per diem* ——	0	2	6
Country witnesses, *per diem* ——	0	5	0

Attend-

	l.	s.	d.
Attending the trial every day 6*s.* 8*d.* and on the day of trial, between attorney and client	0	13	4
If between party and party, in the whole ———	0	13	4

BAIL-BONDS.

Common costs in the sheriff's name	2	10	0
On an assignment, if 12 sheets judgment by *Nil dicit*	4	10	6
For every three sheets more —	0	10	0
If the plaintiff enter appearance for defendant, more ——	1	0	0
On *Comper' ad diem*, the old way	3	10	0
On the new way ———	5	10	0
For every 3 sheets above 12 in a declaration ——	0	10	0

NON PROS.

For not declaring where appearance	1	13	4
With bail, more ——	0	10	0
For not replying ——	2	13	4
If bail, more ———	0	10	0
For not joining in demurrer to declaration ———	3	6	8
Bail, more ———	0	10	0
And for every other pleading more, if short ——	1	0	0
For not entering issue ———	3	3	4
Bail more ————	0	10	0
For every count more than the first	0	3	0

COGN'.

Coon' Dampn'.

	l.	s.	d.
1. Narr' the fame —	5	0	0
Of different terms —	5	10	0
Every Narr' more —	0	10	0
With bail more —	0	10	0

By Default.

	l.	s.	d.
Inquiry 1 Narr' —	7	10	0
Every Narr' more —	0	10	0
If plaintiff enters appearance	1	0	0
If in trefpafs and imprifonment, affault, *&c.*	7	16	8
If plaintiff enter appearances	8	16	8

Trials.

	l.	s.	d.
Common cofts 1 count —	14	10	0
For every count more —	0	10	0
For trefpafs, affault, or imprifonment, 5 fheets or under	14	16	8
Fvery three fheets more —	0	10	0
In ejectment, on demife —	15	16	8
Every demife more —	0	10	0
Common cofts for not confeffing leafe, entry and oufter on the rule —	16	16	8
Attending taxing cofts, though many caufes in a bill, only confidered as one caufe, fo only	0	3	4

Observations.

1. Nothing for attending a fheriff or marfhal in any cafe.

2. Decla-

2. Declaration where *Habeas corpus* is brought to follow the office the *Habeas corpus* is ſigned in.

3. Counts in a declaration, at the ſuit of attorney, unleſs it appears on the face of the declaration, that he ſues for fees, are to be paid for; and no privilege where he is defendant, either as to appearance or pleading.

4. No declaration to be allowed if the plaintiff be ſummoned the day before the return; but if ſerved upon the return-day, then declaration and entry to be allowed if declaration produced.

5. No maps to be allowed on trials *inter parties.*

6. No wrong or under-charge to be ſupplied in any manner, except in fee for paſſing record when only charged 3 *s.* 4 *d.* inſtead of 6 *s.* 8 *d.*

7. Nothing extraordinary to be allowed for arreſting defendant, or ſerving him with proceſs than the uſual fee of 10 *s.* 6 *d.* and 5 *s.* for extraordinary expence and trouble, even between attorney and client, unleſs by the latter's expreſs orders.

Plaintiff's

Plaintiff's Bill of Disbursements and Fees, on Defendant's being arrested.

Easter Term, 1778.

	Out of pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Instructions, *&c.*	0	0	0	0	2	2	0	4	4
Affidavit of debt	0	2	7	0	4	1	0	5	7
Test. Cap. out of *Mid.* into *London*	0	8	9	0	14	10	1	1	0
Warrant and messenger	0	0	6	0	1	0	0	1	6
Paid officer	0	10	6	0	10	6	0	10	6

Trinity Term following.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Searching whether bail filed	0	0	0	0	1	8	0	3	4
Entring exception thereto, and notice thereof, copy and service	0	0	0	0	1	3	0	2	6
Motion in Treasury for sheriff to return *capias*	0	0	0	0	1	8	0	3	4
Rule	0	4	6	0	4	6	0	4	6
Copy and service	0	0	0	0	1	0	0	2	0
Attending court when other bail added and justified	0	0	0	0	1	8	0	3	4
Declaration 1 *s.* per fol.									

Entring

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Entring on roll and paid prothonotary	0	6	0	0	8	0	0	10	0
Copy on ſtamp delivered folio 10, warrant and duty	0	0	3	0	2	3	0	4	3

If Defendant was ſerved with Copy of Writ only, and not arreſted, the Items will be as follow:

Inſtructions, &c.	0	0	0	0	2	2	0	4	4
Capias	0	4	10	0	7	11	0	11	0
Cap. per cont.	0	3	6	0	6	7	0	9	8
Two copies and ſervice	0	0	0	0	5	0	0	10	0
Searching for appearance	0	0	0	0	1	8	0	3	4
Affidavit of ſervice of proceſs	0	2	7	0	4	1	0	5	7
Appearance purſuant to the ſtatute	0	2	6	0	4	2	0	5	10
Declaration and copy 1 *s. per folio*	0	0	0	0	6	0	0	12	0
Entry on roll, and paid prothonotary	0	6	8	0	9	4	0	12	0
Copy on ſtamp left in office, warrant and duty	0	0	3	0	2	7	0	4	11
Notice of declaration filed, copy and ſervice	0	0	0	0	1	0	0	2	0
Rule to plead	0	1	10	0	2	2	0	2	6
Searching for, and demanding plea	0	0	0	0	2	8	0	5	4
General iſſue	0	0	0	0	0	6	0	1	0

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Drawing part of issue, at 8 *d.* per folio									
Copy of whole issue, at rate of 4 *d.* per folio									
Entry of issue on roll, and paid prothonotaries	0	6	0	0	9	0	0	12	0
Warrants of attorney	0	0	8	0	1	8	0	2	8
Entring cause for trial	0	13	0	0	13	4	0	13	4
Attending for that purpose	0	0	0	0	1	8	0	3	4
Notice of trial, copy and service	0	0	0	0	1	0	0	2	0
Stamp and parchment for record	0	6	6	0	6	6	0	6	6
Ingrossing, at 4 *d.* per folio									
Paid prothonotary marking same	0	1	0	0	1	0	0	1	0
Sealing record, jurata, and seal	0	11	2	0	11	2	0	11	2
For ingrossing same	0	0	0	0	3	4	0	6	8
Venire	0	4	0	0	6	2	0	8	4
Return thereof	0	2	6	0	2	6	0	2	6
Hab. Corp. jur.	0	4	5	0	6	8	0	9	0
Subpœna	0	3	8	0	5	4	0	7	0
Four tickets	0	0	0	0	1	0	0	2	0
Service	0	0	0	0	5	0	0	10	0
Conduct money	0	4	0	0	4	0	0	4	0
Instructions for brief	0	0	0	0	3	4	0	6	8
Drawing same, two sheets	0	0	0	0	6	8	0	13	4

Two

	Out of Pocket			Agent			Attorney		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
Two fair copies for council	0	0	0	0	6	8	0	13	4
Fee to serjeant *W.* with brief	4	4	0	4	4	0	4	4	0
To his clerk	0	2	6	0	2	6	0	2	6
Fee to serjeant *S.* with brief	1	1	0	1	1	0	1	1	0
To his clerk	0	2	6	0	2	6	0	2	6
Attending council	0	0	0	0	3	4	0	6	8
May 20, attending court	0	0	0	0	3	4	0	6	8
Making cause *remanet*	0	4	0	0	4	0	0	4	0
Resealing record	0	1	0	0	1	0	0	1	0
Attending for that purpose	0	0	0	0	1	8	0	3	4
Resealing *distringas*	0	0	1	0	0	1	0	0	1
Ditto *spa*	0	0	1	0	0	1	0	0	1
30th, Attending court when plaintiff nonsuited	0	0	0	0	6	8	0	13	4
Court fees about	1	7	8	1	7	8	1	7	8
Term fee, letters, &c.	0	0	0	0	3	6	0	7	0

Michaelmas Term following.

Motion at side bar for notice of time of taxing costs	0	0	0	0	1	8	0	3	4
Rule	0	0	0	0	4	0	0	4	0
Copy and service	0	0	0	0	1	0	0	2	0
Stamping *postea*	0	5	0	0	5	0	0	5	0

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Attending	0	0	0	0	1	8	0	3	4
Bill of coſts and copy	0	0	0	0	2	6	0	5	0
Notice of taxing coſts	0	0	0	0	1	0	0	2	0
Taxing ſame	0	0	0	0	1	8	0	2	6
Prothonotary	0	5	4	0	5	4	0	5	4
Clerk of judgments	0	2	6	0	2	6	0	2	6
Term fee, letters, &c.	0	0	0	0	3	0	0	7	0

Defendant's Bill of Fees and Disbursements on putting in Bail under an Arreſt.

Trinity Vacation, 1777.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Copy of writ from ſheriff	0	0	4	0	0	6	0	1	0
Allowing bail by judge [If term time only 5*s.*]	0	12	0	0	12	0	0	12	0
Ditto by filacer	0	4	6	0	4	6	0	4	6
Notice thereof, copy and ſervice	0	0	0	0	1	6	0	3	0
Notice of juſtification, copy and ſervice	0	0	0	0	1	6	0	3	0
Affidavit thereof	0	2	7	0	4	1	0	5	7
Paid filacer attending court	0	3	4	0	3	4	0	3	4
To council to move	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4

If Bail juſtifies at Judge's Chambers, the Items are,

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Paid filacer attending judge	0	3	4	0	3	4	0	3	4
Attending judge	0	0	0	0	1	8	0	3	4

N. B. *Then no Affidavit of Juſtification is neceſſary, when the Fees,* &c. *are as follows:*

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Inſtructions and warrant to defend	0	0	0	0	2	2	0	4	4
Copy of writ from ſheriff, and poſtage	0	0	6	0	1	0	0	1	6
Special bail piece and duty	0	2	2	0	3	10	0	5	6
Paid acknowledgement before commiſſioner	0	3	6	0	3	6	0	3	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Affidavit of juſtification	0	2	7	0	4	1	0	5	7
Attending judge	0	0	0	0	1	8	0	3	4
Paid filing bail, and affidavit of juſtification with filacer	0	7	0	0	7	0	0	7	0
Attending for that purpoſe	0	0	0	0	1	8	0	3	4
Notice thereof, copy and ſervice	0	0	0	0	1	6	0	3	0
Letters, &c.	0	0	6	0	1	6	0	2	6

Bill of Fees, &c. when Cauſe tried by ſpecial Jury.

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*d.*	*d.*
Inſtructions to move	0	0	0	0	1	3	0	2	6
To council for motion	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Rule	0	4	0	0	4	0	0	4	0
Copy and ſervice, with prothonotary's appointment	0	0	0	0	1	0	0	2	0
His fee	2	2	0	2	2	0	2	2	0
Attending to name, 48	0	0	0	0	3	4	0	6	8
Copies of liſts	0	2	6	0	2	6	0	2	6
Sheriff attending with book of freeholders	2	2	0	2	2	0	2	2	0
Striking out 24	0	0	0	0	1	8	0	3	4
Copy thereof	0	2	6	0	2	6	0	2	6
Special *Hab. Corp. Jur.*	0	9	2	0	10	4	0	12	6
Returning ſame	0	12	0	0	12	0	0	12	0
Sheriff ſummoning jury	2	2	0	2	2	0	2	2	0
Each juryman 1 guinea	12	12	0	12	12	0	12	12	0

Costs on a View.

Affidavit of neceſſity of view	0	2	7	0	4	1	0	5	7
To council to move	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4

Rule

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Rule	0	8	0	0	8	0	0	8	0
Copy and ſervice	0	0	0	0	1	0	0	2	0
Meeting at ſheriff's office to ſettle view	0	0	0	0	3	4	0	6	8
Summoning jury for view	1	1	0	1	1	0	1	1	0
Each juryman thereon 1 guinea	12	12	0	12	12	0	12	12	0
Sheriff	2	2	0	2	2	0	2	2	0
Expences for coach-hire, at coffee houſe, and for refreſhments									
Attending view	0	0	0	0	10	6	1	1	0
Surveying and mapping premiſſes in queſtion	5	5	0	5	5	0	5	5	0
Three copies for counſel	0	0	0	0	15	0	1	10	0
Surveyor attending trial	1	1	0	1	1	0	1	1	0

Bill of Costs on entring Satisfaction on Judgment.

If in Term Time.

Warrant of attorney to acknowledge ſatisfaction on record	0	5	1	0	10	6	1	1	0
Searching docquet for number roll of judgment	0	0	0	0	1	8	[illegible]	3	4
Paid for every term 4*d.*									

	Out of Pocket			Agent			Attorney		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Clerk of treaſury drawing and entring	0	2	0	0	2	0	0	2	0
Cryer bringing roll into court	0	1	0	0	1	0	0	1	0
Prothonotary	0	2	0	0	2	0	0	2	0
Secondary	0	1	0	0	1	0	0	1	0
To him for entring ſatisfaction	0	4	0	0	4	0	0	4	0
To box at the rate of one ſhilling for every 100*l.* mentioned in judgment.									
Attending Weſtminſter	0	0	0	0	1	8	0	3	4
Term fee, letters, *&c.*	0	0	0	0	3	0	0	6	0

If in Vacation.

	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
Fiat parchment and ingroſſing	0	0	2	0	1	10	0	3	6
Chief juſtice's clerk	0	12	0	0	12	0	0	12	0
Prothonotary	0	2	0	0	2	0	0	2	0
Clerk of judgments	0	5	4	0	5	4	0	5	4
Fee on acknowledging ſatisfaction	0	0	0	0	3	4	0	6	8
If judgment above ten years old, clerk of treaſury more	0	4	0	0	4	0	0	4	0

Of

Of the duty and fees of the ſheriff of Middleſex, *his under-ſheriff,* &c.

IT is the duty of the ſheriff of *Middleſex*, by himſelf and deputies, to attend all his majeſty's courts, judges, juſtices and commiſſioners within his county; and to execute all writs and proceſſes by them and every of them directed to him; and alſo to hold his county-courts, tourns and court leets within the ſame.

The ſheriff of *Middleſex*, who are alſo ſheriffs of *London*, is nominated by the citizens thereof; and are, as ſheriffs of *London*, at much greater expence in paſſing through their office than the ſheriff of any other county in *England*; and therefore oblige their under-ſheriff of *Middleſex*, out of the fees and profits ariſing from that office, to advance money from time to time to pay all rewards payable by the ſaid ſheriff for apprehending highwaymen and other malefactors, which are given by ſeveral acts of parliament, and to pay the wages of the juſtices of peace attending at the ſeveral ſeſſions of the peace for the ſaid county of *Middleſex*, and to bear part of the expence of the entertainments at the ſeſſions of gaol-delivery held in the *Old-baily*, *London*, for the county of *Middleſex*, which, together with other charges incident to the ſaid office, amounts annually at leaſt to the ſum of 450*l.* For the diſpatch of the buſineſs of the county he keeps his office in *Took's Court*, *Carey Street*, *Lincoln's*

Lincoln's Inn Fields, wherein, befides his own attendance, three clerks are daily employed (*Sundays* and holidays excepted); they have no falary nor wages, but the allowance hereafter mentioned out of the fees. And in confideration of his giving fecurity to the faid fheriff in the fum of 12,000 *l.* to indemnify him from all damages and loffes that may happen from the miftake, omiffion or mifdemeanor of him, his deputies, clerks or bailiffs, the fheriff hath granted to him all the lawful fees, profits and perquifites belonging to the faid office; and in virtue thereof he claims the feveral fees and fums of money hereafter mentioned, which are all the fees belonging to the faid office, except what may be claimed by the county clerk.

To

	Sheriff.			Clerks.			Total.		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
To the charge of paſſing the ſheriff's accounts for *Middleſex* in the *Exchequer* by Stat. 3 *Geo.* 2.	119	3	0						
Of every bailiff, when admitted into his office, in lieu of all fees due to the ſheriff on arreſts that may come to his hands, except fees on executions (commonly called *poundage.*)	6	10	0						
Of every bailiff more for his indenture of covenants and bond to perform the ſame, and attending the execution thereof				1	1	6			
For every warrant on a bill of *Middleſex*, *Capias* or *Quo minus*	0	0	4						
For every name more than one				0	0	4			
For every warrant on a ſpecial *Capias* or *Quo minus*, *i. e.* containing the whole declaration	0	0	4	0	2	0	0	2	4
For every warrant on a writ of *Scire facias*, extent, *Elegit*, ſummons againſt privileged perſons, original in real or perſonal actions, *Pone*, *Ven. facias* out of the *Exchequer*, attachment for the peace out of the crown office, *Diſtringas*, writ of poſſeſſion, *capias excommunication*, *Ne exeat regno*, *Supplicavit*, and *Capias ſi laicus*				0	2	4			
For every bail bond taken in the office, (which rarely happens, the bond being uſually taken from defendants in cuſtody, by the bailiff,) for ſearching the office and making a *Superſedeas* to ſet the defendant at liberty				0	9	4			
For taking ſecurity on a writ of *Ne exeat regno*; ſearching the office, and *Superſedeas* to ſet the defendant at liberty				1	1	0			

For

		Sheriff.	Clerks.	Total.
		l. s. d.	l. s. d.	l. s. d.
For a bond on an attachment *pro pace* out of the crown office			0 2 4	
For taking security on a writ of *Supplicavit*, which rarely happens, searching the office, and for *supersedeas* to set the defendant at liberty			0 10 6	
For the assignment of every bail bond	0 2 4			
For the plaintiff's discharge for the same	0 2 4		0 5 0	
For the return of the writ	0 0 4			
For the delivering up of a bail bond back to the deft. by the plt.'s order			0 5 0	
Fees for returns of writs				
For allowing every writ of *Habeas corpus cum causa*	0 4 8			
For the return thereof, if but one writ to be returned against the defendant	0 2 4	0 2 0	0 7 4	0 9 4
For a warrant to the bailiff to conduct the defendant before the judge or court, as the writ is returned	0 2 4			
For every other writ against the defendant returned thereon		0 2 0	0 0 4	0 2 4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff			0 2 4	
For executing a writ of inquiry of damages and return of the inquisition thereon		0 10 0	0 3 4	
To the bailiff for summoning and swearing the jury	0 4 0			
For the use of the court-house or room where the writ is executed	0 1 0			1 10 4
To the jurors, each 1*s.*	0 12 0			
	0 17 0			
For swearing each witness			0 0 4	

For

	Sheriff.	Clerks.	Total.
	l. s. d.	l. s. d.	l. s. d.
For taking an inquisition on a *Capias utlagatum*, Schedule of the goods seised and return thereof		0 18 6	
To the bailiff for summoning the jury 0 4 0; To the use of the room where the inquisition is taken 0 1 0; To the jurymen, each 1*s*. 0 12 0; [total] 0 17 0			1 15 6
If more than one finding, for every other		0 3 4	
The like on extents		0 18 6	
For every finding, if more than one, each		0 3 4	
Attending each adjournment		0 10 0	
For a summons for a witness to give evidence		0 2 0	
For taking an inquisition on a *Scire fieri* inquiry, inquisition and return thereof	0 10 0	0 8 6	0 18 6
For the return of a *Cepi corpus* or *Non invent.* on every bill of *Middlesex*, *Capias*, *Quo minus*, *Capias ad satisfaciendum*, and *Capias utlagatum*, if on inquisition taken		0 0 4	
For the like return, if by a bailiff of a liberty		0 0 8	
Return of *Istud breve*		0 0 4	
For returning *Fieri feci* on a *Fieri facias*		0 2 0	
If by the bailiff of a liberty		0 4 0	
For returning *Nulla bona* thereon		0 1 0	
If by the bailiff of a liberty		0 2 0	
For special returns, such as rescue, defendant discharged by *Supersedeas*, or committed to the *Fleet* or *King's Bench* prison on a writ of *Habeas corpus*		0 2 4	
For the return of *Venditioni exponas*		0 2 0	
For the return of *Scire feci*, each name		0 2 0	

For

	Sheriff.	Clerks.	Total.
	l. s. d.	l. s. d.	l. s. d.
For the return of *Nihil* or *Mortuus* on a *Scire facias*		0 1 0	
For the return of an escape warrant		0 2 0	
For the return of a *Venire facias*, summons against privileged persons, or original that the deft. is summoned		0 2 0	
For the return of a *Nihil* thereon		0 1 0	
For the return of *Non invent.* on an attachment out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaster*.		0 1 0	
For the return of a *Cepi corpus* thereon		0 2 0	
For the return of *Non invent.* on a proclamation out of the courts of *Chancery*, *Exchequer*, or dutchy of *Lancaster*		0 2 0	
For the allowance of every writ of *Supersedeas* or restitution	0 2 0	0 0 4	0 2 4
For a warrant thereon to discharge the defendant's body or goods out of custody		0 2 4	
For the return of a writ of *Venire facias juratores*, with the panel of 48 freeholders names thereto annexed	0 2 0		
For the return of a writ of *Distringas* or *Habeas corpora*, with a panel of 48 freeholders names annexed thereto	0 12 0		

N. B. The sheriff makes up a panel of 48 jurymen for each court in *Westminster-hall* every term, but before he can do that by his officer, he inquires after a competent number of persons names taken out of the freeholders book for that purpose; makes out a warrant to his bailiffs to summons them; delivers a panel to the marshal of each chief justice or chief baron; attends the court by himself or deputy during each sessions of *Nisi prius*, and after term enters the names of each juryman in an alphabetical register, and gives certificates to each juryman of his attendance (if required); for all which no fee is claimed or taken.

For

	Sheriff.			*Clerks.*			*Total.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
For the return of a writ of possession				0	2	0			
Attending the master of the *King's bench* office, prothonotary of the court of *Common Pleas*, or deputy remembrancer of the court of *Exchequer*, from the plaintiff and defendant, each one guinea	2	2	0						
For attending with the jury on a view and certifying to the court that the view has been had, the same fee as is paid to each juryman									
For attending every trial at bar, or at *Nisi prius*, where a special jury is summoned, the same fee as is given to each juryman after the trial									
N. B. The last mentioned fee is taken by the under-sheriff or clerk who attends the trial.									
For every warrant to a bailiff to summon a special jury				0	2	4			
Fees called poundage.									
For taking a defendant in execution, or levying the goods, for every sum of money not exceeding 100*l.* for every 20*s* thereof	0	1	0						
For every 20*s.* exceeding that sum	0	0	6						
For the like on an extent, *Fieri facias*, or *Capias ad satisfaciendum* at the suit of the king	0	1	6						
For every 20*s.* after the first 100*l.*	0	1	0						
For every 20*s* levied on a *Levari facias* the summons of the pipe or green wax (except post fines)	0	1	0						
For executing every writ of possession for every 20*s.* of the yearly value of the premisses, of which possession is given	0	1	0						

For

	Sheriff. l. s. d.	Clerks. l. s. d.	Total. l. s. d.
For the return of a precept to summon the jury before the commissioners in a commission of ideocy or lunacy, and attending thereon	2 2 0		
For the return of a *Venire facias jur'* and attending the trial of a traverse at the sessions of the peace on every indictment except for felony, or where the defendant is in prison		0 10 0	
N. B. The sheriff summonses, impanels and returns 8 grand juries in the year at the several sessions of the peace at *Hicks's hall*, and attends by his deputy during all the time of the sessions there, and also returns 8 juries in the year at the several sessions at the *Old Bailey*, besides party juries and juries of matrons; and attends there without any other fee or reward whatsoever.			
For a bill of sale of goods on a *Fieri facias*, and an inventory thereunto annexed		0 9 0	
For a bill of sale of a term of years		0 13 4	
The like on a *Venditioni exponas*		0 13 4	
For allowing a writ of *Non ponend. in assis.*		0 13 4	
For charging a defendant in custody with every other writ than that on which he is arrested		0 2 4	
For a certificate in order for a *Supersed.*		0 2 4	
For a certificate that the defendant is in execution in order for his discharge by the late act of parliament		0 2 4	
For his discharge by the rule of court thereon	Nothing		
For attending with writs and other things out of the office to be produced on trial, for each day's attendance		0 6 8	

For

	Sheriff. l. s. d.	Clerks. l. s. d.	Total. l. s. d.
For the plaintiff's discharge on every writ of *Fieri facias*, whereon money has been levied, or on a *Capias ad satisfaciend.* executed on the defendant, and on every writ on which the defendant is committed to the gaol		0 2 4	
For searching the books and files, and a warrant to the keeper of *Newgate* to discharge the defendant out of custody.		0 2 4	
N. B. The defendants are oftener discharged out of *Newgate* without paying any fees than with. Copies of writs are given, and searches are made for prisoners in *Newgate* without any fees for the same			
For every search		0 0 4	
For a short copy of a writ in order to put in bail by		0 0 6	
For searching for a writ in force; which is never done but upon the undertaking of some attorney to put in bail thereto		0 1 0	
For a copy of a bill of *Middlesex*, *Capias* or *Quo minus* at length		0 1 0	
For copies of all writs or other things for every sheet of copy wrote		0 0 6	
For executing and returning a writ of false judgment, or *Accedas ad cur'*		0 6 8	

Fees for executing a writ of *Ad quod damnum* cannot well be settled, but must be left to the sheriff and the party to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies, or where the intended fair or market is to be held: which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by *Stat.* 8 & 9 *W.* 3. *c.* 31. for settling the same in case the sheriffs and the parties cannot agree.

	Sheriff.	*Clerks.*	*Total.*
	l. s. d.	*l. s. d.*	*l. s. d.*
For attending lord mayor, as conservator of the river *Thames*; making warrants on the writs of *Capias*, and summons and returning the same, and for summoning, impanelling and returning the grand jury at the first court in every year, the water-bailiff pays		1 1 0	
For attending the lord mayor at the second court in every year, and returning the summons and *Capias* process, the water-bailiff pays		0 10 6	
For summoning, impanelling, and returning the traverse jury, and attending the trials there, which very rarely happens		0 10 0	
For returning, summoning and impanelling a jury, and attending commissioners in a commission out of the *Exchequer* to find debts		0 10 0	
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3 A

The End of the FIRST VOLUME.

ERRATA and OMISSIONS.

Page 597. In margin *for* "direction" *read* "form." *P.* 608. L. 8. *for* "the" *read* "though." Line 9 *after* "court" *add* "will." *Before* "summonces" *add* "on order of reference from court, party seeking relief, must apply before award made, unless on some irregularity in award, and then before order is made rule of court, or he will be too late". *P.* 622. dele See *C. B.* pract. 92. in margent. *P.* 650. L. 12, *after* "the" *add* "under-sheriff's" and *before* "him" *add* "by the high sheriff." *P.* 856. L. 21 *for* "party" *read* "petty."